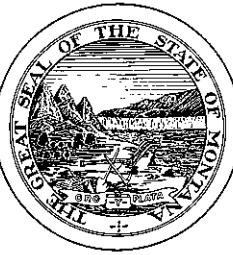


COMMISSIONER OF POLITICAL PRACTICES



STATE OF MONTANA

JONATHAN R. MOTL
COMMISSIONER
TELEPHONE (406) 444-2942
FAX (406) 444-1643

1205 EIGHTH AVENUE
PO BOX 202401
HELENA, MONTANA 59620-2401
www.politicalpractices.mt.gov

October 21, 2013

Dee Brown
Chairperson and Presiding Officer
State Administration and Veterans' Affairs Interim Committee
63rd Montana Legislature

House and Senate Members
State Administration and Veterans' Affairs Interim Committee
63rd Montana Legislature

Dear Chairperson Brown and Members of the SAVA committee:

This letter introduces the presentation that the staff of the Office of the Commissioner of Political Practices will make to the SAVA Committee. We have organized that presentation to meet the following areas of inquiry, as determined by the Committee:

1. The data on number of cases currently handled in each duty area of the Commissioner's Office. The duty areas listed in the SAVA handout are lobbying, ethics and campaigns.
2. A flow chart type approach as to how current office processes handle its work in each duty area.
3. Efficiencies of user use of, or public access to, each area of duty.

In making this presentation we note that other duties demand that additional day to day tasks such as budget work, phone answering, and website maintenance be performed by the staff working at the Commissioner's office.

INTRODUCTION

The Commissioner's office has six full time staff. The staff are Jonathan Motl, Jamie McNaughton, Julie Steab, Mary Baker, Karen Musgrave and Kym Trujillo. The Commissioner's base budget is \$562,000 of which \$337,000 is paid for staff salaries and benefits. The Commissioner is the

highest paid person in the office, at a salary of \$64,375 plus benefits. The Commissioner's staff is aided by consultants who provide services related to IT, data base and legal activities. There is approximately \$150,000 expended on these services. Finally, the Commissioner's office received an allocation of \$502,000 to cover the cost of upgrading electronic access to report forms and reported information, both by the person filing and by the public. This project has been defined and awarded, with contract work underway.

Jonathan Motl, as Commissioner, supervises the work of Mary Baker (program supervisor), Jamie McNaughton (legal counsel) and Julie Steab (investigator). Mary Baker supervises the work of Karen Musgrave (program technician) and Kym Trujillo (data technician). The job descriptions for each position, including Commissioner, are provided to each Committee member.

The jobs of all 6 people are interrelated with multiple contacts between staff occurring on a daily basis. While no one person can perform his or her job without assistance of the other 5 people, there are primary functions associated with each job. The presentation to the Committee will follow primary function and be made as follows:

1. Candidate, political committee and lobbying registration, reporting and auditing

Mary Baker, along with Karen Musgrave and Kym Trujillo, will present information on the numbers of people registering in each area of duty. Further, they will discuss their roles in certifying, auditing and making the information available to the public. Finally, they will present information on the ease of, or problems with, user access by the candidate, committee or lobbying principal as well as ease of, or problems with, access to this information by members of the public. There will be a separate handout or video display for this portion of the presentation. It is expected that this portion of the presentation will take about 30 minutes.

2. Acceptance, investigation, Decision making and enforcement of complaints as well as response to requests for informal or advisory opinions.

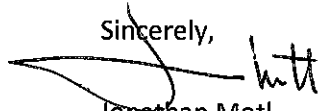
Jonathan Motl, along with Julie Steab and Jamie McNaughton, will present information on the numbers of complaints or other requests for determination, such as an advisory opinion. In addition, they will present information on manner of investigation and process of enforcement. There will be a separate handout or video display for this portion of the presentation. It is expected that this portion of the presentation will take about 30 minutes.

3. Areas of work, currently in stasis, needing attention

Jonathan Motl will describe the areas of work, including administrative regulations and definition of lobbying, that need the future attention of the Commissioner's staff.

At the end of the presentation the Commissioner, and each of the 5 other staff, will be available for response to questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Motl', written over a horizontal line.

Jonathan Motl

Commissioner of Political Practices
State of Montana

Documents Included with letter

Job Descriptions of 6 staff

2010-2013 COPP Docket

Bonogofsky v Kennedy Decision

Bonogofsky v National Gun Owner's Association Decision

Guidelines for campaign finance reports

Guidelines for campaign finance audits

STATE OF MONTANA

JOB DESCRIPTION

Montana state government is an equal opportunity employer. The State shall, upon request, provide reasonable accommodations to otherwise qualified individuals with disabilities.

Job Title: Commissioner of Political Practices

Position Number: 32200001

Location: Helena, Montana

**Department: Commissioner of Political Practices
and Unit:**

Division and Bureau:

Section

Prior Job Descriptions: This is the first job description for this position. There is a prior draft position description [authored by Commissioner Unsworth]. This job description should be viewed as advisory because the Legislature and Governor have final authority in determining the person who holds this position. In particular, the Montana legislature interviews, screens and recommends candidates to the Governor who then appoints the Commissioner, subject to confirmation by the Montana senate.

Job Overview: This position is that of the executive officer in charge of the Office of the Commissioner of Political Practices of the State of Montana, including some direct work responsibility.

Essential Functions (Major Duties or Responsibilities):

The major duties of this job are as follows:

1. 20%. Overall responsibility for all activities of the Commissioner's office (Office), including supervision of those program, budget and office responsibilities carried out by the program supervisor.
2. 20%. Direct responsibility for the policy, legislative, administrative, legal and adjudicative activities performed by the Office, including supervision of the investigator, program supervisor and attorney.
3. 20%. Direct responsibility for accepting and handling Complaints and interpretive requests filed with the Office and then preparing, issuing and explaining to the public any Decisions, dismissals or interpretations stemming from Complaints or requests filed with the Office.

4. 10%. Overall responsibility, working with the Office's legal counsel, for enforcement of Complaint decisions by settlement or by adjudication in the Courts.
5. 10%. Direct responsibility for the legal, administrative, legislative, and public forum positions and actions of the Office.
6. 10%. Overall responsibility, working with the Office's attorney, for updating and maintaining the regulations and policies of the Office.
7. 10%. Direct responsibility for public announcements, positions and explanations of the actions and activities of the Office.

Supervision

The number of employees supervised is: three. The position number for each supervised employee is: 320002, 320009, 320010

Physical and Environmental Demands: The job is a skilled labor job performed primarily at a desk and has no unusual physical or environmental demands.

Knowledge, Skills and Abilities: The job requires a thorough understanding of Montana's intricate campaign finance laws as well as a practical understanding of the relationship between Montana's election administrators, candidates and the Commissioner's office. The job requires adjudicative, legal analysis, legal and administrative ability as well as experience in budget and personnel management. The job requires the ability to appear in a courtroom, legislative hearing and a press conference. The job required that the Commissioner perform direct work rather than just supervise others who work.

Minimum Qualifications (Education and Experience): The minimum qualifications are a juris doctor or comparable degree from an accredited institution of legal education, a license as a Montana attorney and at least 3 years of experience in litigation or complex administrative adjudication. A dedicated and demonstrated period of experience in dealing with Montana's campaign practice laws may be substituted for the experience. Past management experience is desireable but not a requirement.

Special Requirements:


List any other special required information for this position

- | | |
|--|---|
| <input type="checkbox"/> Fingerprint check | <input type="checkbox"/> Valid driver's license |
| <input type="checkbox"/> Background check | <input type="checkbox"/> Other; Describe |
| Safety Information | |

The specific statements shown in each section of this description are not intended to be all inclusive. They represent typical elements and criteria considered necessary to perform the job successfully.

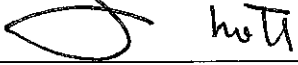
Signatures

My signature below indicates the statements in the job description are accurate and complete.

	Commissioner	9-17-2013
Immediate Supervisor	Title	Date

Administrative Review	Title	Date
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My signature below indicates that I have read this job description.

	Commissioner	9-17-2013
Employee	Title	Date

Human Resources Review

Job Code Title:

Job Code Number:

Pay Band:

My signature below indicates that Human Resources has reviewed this job description for completeness and has made the following determinations:

☐ FLSA Exempt

☐ FLSA Non-Exempt

☐ Telework Available

☐ Telework Not Available

☐ Classification Complete

☐ Organizational Chart attached

Union Code

Human Resources:

Signature

Title

Date

STATE OF MONTANA

JOB DESCRIPTION

Montana state government is an equal opportunity employer. The State shall, upon request, provide reasonable accommodations to otherwise qualified individuals with disabilities.

Job Title: Legal Counsel to the Office of the Commissioner of Political Practices

Position Number: 32200010

Location: Helena, Montana

Department: Commissioner of Political Practices **Division and Bureau:** **Section and Unit:**

Prior Job Descriptions: This is the first job description for this position. The Commissioner's office has not been staffed by an attorney since the mid 1980s.

Job Overview: This position is that of legal counsel to the Office of the Commissioner of Political Practices of the State of Montana (Office).

Essential Functions (Major Duties or Responsibilities):

The major duties of this job are as follows:

1. **45%.** Direct general counsel responsibility, under the supervision of the Commissioner, for development, implementation and representation (including at the Legislature) of the legal policy positions taken by the Office, including those positions stated through administrative regulations, Decisions or interpretative opinions. The general counsel will review and comment on all decisions or interpretations issued by the Commissioner if the Commissioner is an attorney. If the Commissioner is not an attorney then general counsel will draft the legal analysis portion of Decisions or interpretations.
2. **40%.** Direct litigation responsibility, under supervision of the Commissioner, for enforcement of Decisions. Enforcement can be by settlement (payment of fine) or by adjudication in the Courts. Direct responsibility, under supervision of the Commissioner, to represent the Office in all legal matters, including ethics hearings, not handled by the Attorney General.
3. **10%.** Draft, circulate, conduct hearings and publish, all in conformance with MAPA requirements, administrative regulations as needed by Office.
4. **5%.** Special tasks as assigned by the Commissioner.

Supervision

The number of employees supervised is zero.

Physical and Environmental Demands: The job is a skilled labor job performed primarily at a desk and has no unusual physical or environmental demands.

Knowledge, Skills and Abilities: The job requires a thorough understanding of Montana's intricate campaign finance laws as well as a practical understanding of the relationship between Montana's election administrators, candidates and the Commissioner's office. The job requires the ability to appear in a courtroom, legislative hearing and a press conference.

Minimum Qualifications (Education and Experience): The person in this position must be a licensed Montana attorney. The minimum qualifications are a juris doctor or comparable degree from an accredited institution of legal education and a license as a Montana attorney. Experience in litigation is desirable.

Special Requirements:

List any other special required information for this position

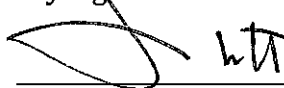
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| <input type="checkbox"/> Fingerprint check | <input type="checkbox"/> Valid driver's license |
| <input type="checkbox"/> Background check | <input type="checkbox"/> Other; Describe |

Safety Information

The specific statements shown in each section of this description are not intended to be all inclusive. They represent typical elements and criteria considered necessary to perform the job successfully.

Signatures

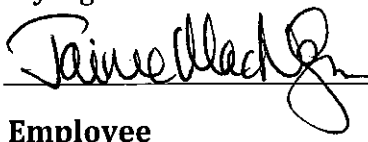
My signature below indicates the statements in the job description are accurate and complete.

	Commissioner	9-17-2013
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Immediate Supervisor	Title	Date
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Administrative Review	Title	Date
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My signature below indicates that I have read this job description.

	Legal Counsel	9/17/13
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Employee	Title	Date
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Human Resources Review

Job Code Title:

Job Code Number:

Pay Band:

My signature below indicates that Human Resources has reviewed this job description for completeness and has made the following determinations:

☐ FLSA Exempt

☐ FLSA Non-Exempt

☐ Telework Available

☐ Telework Not Available

☐ Classification Complete

☐ Organizational Chart attached

Union Code

Human Resources:

Signature

Title

Date

STATE OF MONTANA

JOB DESCRIPTION

Montana state government is an equal opportunity employer. The State shall, upon request, provide reasonable accommodations to otherwise qualified individuals with disabilities.

Job Title: Investigator to the Office of the Commissioner of Political Practices **Position:**
Commissioner of Political Practices **Division and Bureau:** **Section and Unit:**

Job Overview: This position is that of investigator to the Office of the Commissioner of Political

Practices of the State of Montana (Office).

Essential Number: 3220009 **Location:** Helena, Montana

Department Functions (Major Duties or Responsibilities):

The major duties of this job are as follows:

1. **40%.** Direct responsibility, under supervision of the Commissioner, for investigation of the facts relative to the issues raised by Complaints (campaign practices or lobbying) filed with the Office.
2. **30%.** Team responsibility, working with Attorney and/or Commissioner, for regular oral and written reports of results of investigation with adjustments for additional information required to refine the objectives and goals of the investigation to serve the on-going needs of the projects.
3. **10%.** Prepare reports on special issues or projects as assigned by Office.
4. **10%.** Review and comment on Decisions issued by the Commissioner with emphasis on checking the facts of investigation cited in the Decision.
5. **10%.** Perform tasks, under the direction of Attorney or Commissioner, relative to preparation of cases for trial or hearing.

Supervision

The number of employees supervised is zero.

Physical and Environmental Demands: The job is a skilled labor job performed primarily at a desk and has no unusual physical or environmental demands.

Knowledge, Skills and Abilities: The job requires: a thorough understanding of Montana's intricate campaign finance laws, as well as a practical understanding of the relationship between Montana's election administrators, candidates and the Commissioner's office; an understanding of the sources of information related to tracing the actions of people and entities; an understanding of computer programs that assist investigation; the ability to conduct in person interviews; the ability to conduct internet based investigative research; the ability to work as part of a team of lawyers and other professionals; and, the ability to assemble facts into a useable format.

Minimum Qualifications (Education and Experience):

The education required is demonstrated applied knowledge of the the regulatory relationship between government and private entities equivalent to that gained through a liberal arts college degree, along with at least 3 years of hands-on regulation related investigative work with a government agency or private entity. A combination of technical degrees, specific class training and experience can be substituted for the college degree requirement.

Special Requirements:

List any other special required information for this position


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| <input type="checkbox"/> Fingerprint check | <input type="checkbox"/> Valid driver's license |
| <input type="checkbox"/> Background check | <input type="checkbox"/> Other; Describe |

Safety Information

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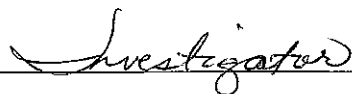
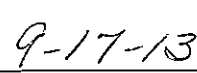
Signatures

My signature below indicates the statements in the job description are accurate and complete.

	<u>commissioner</u>	<u>9-17-2013</u>
Immediate Supervisor	Title	Date

Administrative Review	Title	Date
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My signature below indicates that I have read this job description.

		
Employee	Title	Date

Human Resources Review

Job Code Title:

Job Code Number:

Pay Band:

My signature below indicates that Human Resources has reviewed this job description for completeness and has made the following determinations:

☐ FLSA Exempt

☐ FLSA Non-Exempt

☐ Telework Available

☐ Telework Not Available

☐ Classification Complete

☐ Organizational Chart attached

Union Code

Human Resources:

Signature

Title

Date

STATE OF MONTANA

JOB DESCRIPTION

Montana state government is an equal opportunity employer. The State shall, upon request, provide reasonable accommodations to otherwise qualified individuals with disabilities.

Job Title: Program Supervisor **Position Number:** 32200002 **Location:** Helena, Montana

Department: Commissioner of Political Practices **Division and Bureau:** **Section and Unit:**

Prior Job Descriptions: This position operated under two prior job descriptions : 2002 to January of 2013; and, January of 2013 to this date. This job description replaces the January of 2013 job description.

Job Overview: This position is that of lead program person for the Commissioner's Office. This position is directly responsible for the Office's proper acceptance, certification, public records access and audit functions in regard to candidate, lobbyist and elected official forms, including staff hiring and firing. This position is also responsible, through the Commissioner, for the information system and budgetary functions of the Office.

Essential Functions (Major Duties or Responsibilities):

The major duties of this job are as follows:

1. **30%.** Accept, certify, audit, and post for public access all campaign, lobbying, and personal financial forms filed by all candidates for public office in the State of Montana as well as by political committees, lobbyists, principals or elected officials. Provide research, knowledge of past precedent, and interpretations of administrative rules and laws to subordinate staff. This task shall include responding to questions from candidates and the public concerning the requirements and timing of report filing. In addition, in coordination with the Commissioner, facilitate meetings and provide training about political practices, procedures, and electronic reporting services including educational materials such as manuals, brochures and training videos.
2. **20%.** Directly supervise, including hiring and firing authority, the staff (including two full time and temporary as needed) necessary to perform task No. 1 and implement, review and develop, as need be, the forms and policies

necessary to perform task No. 1, including adapting those forms and policies to changed requirements of election law.

3. **20%.** Implement and maintain, under the supervision of the Commissioner, the overall function of the physical office facility, the overall function of information storage (hard copy and electronic), the public information staffing of the Office and the budget of the Office.
4. **10%.** Perform, as appropriate, direct human resources functions or facilitate, as appropriate, the human resource functions performed by the Commissioner.
5. **10%.** Maintain familiarity with all activities of the Commissioner's office, including those policy, legal, legislative and adjudicative activities performed by the Commissioner, investigator and attorney, in order to facilitate continuity of actions of the Office when staffing changes occur, including any change in Commissioner. As part of this task this position will review all complaint Decisions prior to issuance by the Commissioner with the charge of examining the decisions for consistency with prior Decisions.
6. **10%.** Upon request of the Commissioner represent the Office's budget or other issues to the legislature and perform special function designations for the office including Safety Manager, ITMC representative, Security Officer, Telephone Coordinator as well as work on special projects assigned by Commissioner.

Supervision

The number of employees supervised is: two full time and temporary as needed. The position number for each supervised full time employee is: 320007 (program and data manager) and 320008 (program assistant).

Physical and Environmental Demands: The job is a skilled labor job performed primarily at a desk and has no unusual physical or environmental demands. The job requires longer than normal days (leading to comp time) during the peak periods of report filing by candidates and committees. The job may require work at all hours related to legislative or administrative hearings.

Knowledge, Skills and Abilities: The job requires a thorough understanding of Montana's intricate campaign finance laws as well as a practical understanding of the relationship between Montana's election administrators, candidates and the Commissioner's office. The job requires administrative ability in budget and personnel management.

Minimum Qualifications (Education and Experience): The minimum qualifications are a bachelor's degree from an accredited institution of higher education (preferred) as well as 3 years of experience in work comparable to that performed at the Commissioner's office. An associate's degree with a showing of specific educational achievement (on

the job training), along with demonstrated proficiency in the areas of work can be substituted for the requirement of a four year college degree.

Special Requirements:

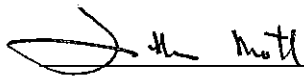
List any other special required information for this position

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| <input type="checkbox"/> Fingerprint check | <input type="checkbox"/> Valid driver's license |
| <input type="checkbox"/> Background check | <input type="checkbox"/> Other; Describe |
| Safety Information | |

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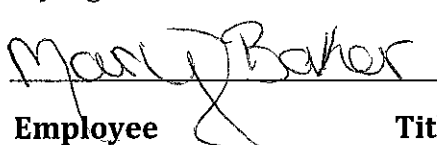
Signatures

My signature below indicates the statements in the job description are accurate and complete.

	Commissioner	9-17-2013
Immediate Supervisor	Title	Date

Administrative Review	Title	Date
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My signature below indicates that I have read this job description.

	Program Supervisor	9/17/13
Employee	Title	Date

Human Resources Review

Job Code Title:

Job Code Number:

Pay Band:

My signature below indicates that Human Resources has reviewed this job description for completeness and has made the following determinations:

☐ FLSA Exempt

☐ FLSA Non-Exempt

☐ Telework Available

☐ Telework Not Available

☐ Classification Complete

☐ Organizational Chart attached

Union Code

Human Resources:

Signature

Title

Date

STATE OF MONTANA

JOB DESCRIPTION

Montana state government is an equal opportunity employer. The State shall, upon request, provide reasonable accommodations to otherwise qualified individuals with disabilities.

Working Title: Data Manager

Position Number: 00005

Department: Commissioner of Political Practices

Location: Helena

Job Overview:

The data manager is responsible for maintaining, supporting, and enhancing databases for compliance monitoring and reporting functions. The data manager provides technical support to agency staff, coordinates the development and implementation of office procedures and forms, and reviews, enters, and reconciles reports received from candidates, principals, and lobbyists to enforce registration and reporting requirements.

Essential Functions (Major Duties or Responsibilities):

- **Data Management (40%)** - Support compliance monitoring and reporting functions of the Office of the Commissioner of Political Practices. Manage data and maintain database systems, maintain and/or modify existing information within agency systems, translate data for import and export, develop specialized queries and reports. Maintain user security, virus protection, and data backup systems. Train staff on various database operations. Coordinate with ITSD to meet the technology needs of the agency.
- **Information Systems Support (25%)** - Provide technical support to agency staff. Troubleshoot and resolve routine operational problems and coordinate with ITSD to solve technical problems. Develop and maintain spreadsheets, macros and other automated formats to provide data. Provide technical training to agency staff. Define data requirements for agency systems, including appropriate formulas and formats for reports. Run, test, and revise reports and requirements. Maintain IT user manuals and documentation. Manage the agency's website. Make recommendations regarding future IT needs of the agency.
- **Procedures and Forms (15%)** - Coordinate the development and implementation of office procedures and electronic forms to facilitate the monitoring and enforcement of campaign

practices, campaign finance disclosure, lobbying disclosure, business interest disclosure, and ethical standards of conduct.

- **Candidate/Principal/Lobbyist Reporting (15%)** - Review, enter, and reconcile required reports received from candidates, principals, and lobbyists to enforce registration and reporting requirements. Review reports to ensure accuracy and completeness, research databases and print files to ensure reported information reconciles with other office data. Correspond with candidates, principals, and lobbyists to resolve issues of noncompliance.

Physical and Environmental Demands:

Data managers normally work in well-lighted, comfortable offices. Injuries in this occupation are uncommon, but like other workers who type on a keyboard for long periods, data managers are susceptible to eyestrain, back discomfort, and hand and wrist problems such as carpal tunnel syndrome. Data managers are required to occasionally lift, move, and connect computer equipment, which requires the ability to lift up to 25 pounds and be able to bend to access computer connections. The data manager works a 40-hour workweek. Overtime and weekend work is occasionally required, especially during an election.

Knowledge, Skills and Abilities:

The data manager must have knowledge of the principles and practices of computer science, basic database management, computer operating systems, and database software such as Oracle. This work requires knowledge of computer equipment and installed software. The incumbent must have good technical writing and documentation skills. This position requires knowledge of the policies and procedures governing the Commissioner of Political Practices, administrative rule procedures, and statutory reporting requirements.

Minimum Qualifications (Education and Experience):

The above knowledge, skills, and abilities are typically acquired through a computer-related associate's degree, plus two years of job-related work experience. Alternative combinations of education and experience may be considered.

Special Requirements:

List any other special required information for this position

- ☐ Fingerprint check
- ☐ Background check
- ☐ Valid driver's license

- ☐ Union Code
- ☐ Other; Describe
- ☐ Safety Responsibilities

The specific statements shown in each section of this description are not intended to be all inclusive. They represent typical elements and criteria considered necessary to perform the job successfully.

Signatures

My signature below indicates the statements in the job description are accurate and complete.

Mary Baker Prog sup. 1/8/13
Immediate Supervisor Title Date

Administrative Review Title Date

My signature below indicates that I have read this job description.

Kimberly Drizzle Data Manager 1-4-13
Employee Title Date

Human Resources Review

Job Code Title:

Job Code Number:

Pay Band:

My signature below indicates that Human Resources has reviewed this job description for completeness and has made the following determinations:

☐ FLSA Exempt

☐ FLSA Non-Exempt

☐ Telework Available

☐ Telework Not Available

☐ Classification Complete

☐ Organizational Chart attached

Union Code

Human Resources:

Signature

Title

Date

STATE OF MONTANA

JOB DESCRIPTION

Montana state government is an equal opportunity employer. The State shall, upon request, provide reasonable accommodations to otherwise qualified individuals with disabilities.

Working Title: Program Assistant

Position Number: 00008

Location: Helena

Department: Commissioner of Political Practices

Job Overview:

The program assistant applies campaign finance and practices laws, administrative rules, and office policies and procedures to audit campaign finance reports submitted by candidates, treasurers and political committees to verify compliance, identify discrepancies or non-compliance, and to develop reports summarizing financial campaign activity. This position communicates with the public, candidates, treasurers and others regarding lobbying, campaign finance, and practice laws and rules. The incumbent assists with lobbyist registration and performs general office duties as required by the supervisor (Program Specialist) and the Commissioner of Political Practices.

Essential Functions (Major Duties or Responsibilities):

- **Campaign Finance (30%)** - Audit campaign finance reports, such as reports from school elections, political action committees, and political parties. Identify discrepancies or non-compliance reports. Collect and organize information for candidate and committee files. Develop and maintain an accurate summary sheet, recording required information and summarizing financial activity of campaign. Enter data provided on candidate reports into computer database. Maintain information included in campaign reports in accordance with applicable state and federal statutes. Communicate with candidates and committees as necessary when review or audit of campaign finance reports reveals non-compliance with statutes or other problems that require further information.
- **Communication & Administrative Support (45%)** - Communicate with candidates, committees, treasurers, and the general public in writing, by telephone, and in person. Apply lobbying and campaign finance laws and administrative rules to answer or refer questions about subjects such as campaign finance reports, campaign practices, or general questions about filing procedures for ethics complaints. Accept written and telephone requests to provide manuals, forms, and published or photocopied information. Organize

and maintain candidate filing system. Assist in maintenance of agency website. Perform general office duties, such as taking and routing phone calls, greeting visitors, receiving and sending mail, maintaining supplies, filing, scanning and photocopying. Create and edit documents, forms, and spreadsheets.

- **Lobbying Registration (20%)** - Assist with lobbyist registration. Update lobbying docket by recording information required by statute. Answer questions about lobbyist registration requirements and statutes.

Physical and Environmental Demands:

A program assistant's work involves sitting for long periods. This position spends a lot of time keyboarding at a computer monitor. The incumbent may encounter problems of eyestrain, stress, and repetitive motion ailments such as carpal tunnel syndrome. This program assistant works a standard 40-hour workweek, from 8 a.m. – 5 p.m.

Knowledge, Skills and Abilities:

Program assistants should be proficient in oral and written communication. This position requires good customer service and interpersonal skills. Program assistants must exhibit an ability to remain professional when dealing with hostile customers. They should demonstrate good judgment in determining when to refer questions to more senior level staff. The work requires the ability to understand and apply a body of laws and rules using knowledge, interpretation, and application of campaign finance laws, administrative rules, office policies, and other procedures. Requires the ability to comprehend and analyze narrative and numerical data for compliance within applicable laws. This position requires computer word-processing and data-entry skills, with emphasis on accuracy and ability to evaluate a computer database, and knowledge of general office and administrative duties.

Minimum Qualifications (Education and Experience):

The above knowledge, skills, and abilities are typically acquired through a high school diploma or equivalent, plus one year of job-related work experience. Basic computer skills, including familiarity with word processing software and experience working in an office environment preferred. Alternative combinations of education and experience may be considered.

Special Requirements:

List any other special required information for this position

☐ Fingerprint check

☐ Valid driver's license

☐ Background check

Union Code

☐ Other; Describe

Safety Responsibilities

The specific statements shown in each section of this description are not intended to be all inclusive. They represent typical elements and criteria considered necessary to perform the job successfully.

Signatures

My signature below indicates the statements in the job description are accurate and complete.

Mary Baker Prog sup. 1/8/13
Immediate Supervisor Title Date

Administrative Review Title Date

My signature below indicates that I have read this job description.

Larry Musgrave Prog. Asst 1-4-13
Employee Title Date

Human Resources Review

Job Code Title:

Job Code Number:

Pay Band:

My signature below indicates that Human Resources has reviewed this job description for completeness and has made the following determinations:

☐ FLSA Exempt

☐ FLSA Non-Exempt

☐ Telework Available

☐ Telework Not Available

☐ Classification Complete

☐ Organizational Chart attached

Union Code

Human Resources:

Signature

Title

Date

Commissioner	Dates of Service	Shortest Number of Days	Longest Number of Days	Average Number of Days	Complaints Filed during term	Decisions, Dismissals, Withdrawals	Undecided at end of term	Fines
John H. Hanson	1975 to 1980	44	44	44	1	1/0/0 (1)	0	0
Peg Krivec	1981 to 1986	0	0	0	0	0/0/0	0	0
Dolores Colburg	1987 to 1992	27	155	61.53	19	17/0/0 (17)	2	0
Ed Argenbright	1993 to 1998	5	346	61.88	52	54/0/0 (54)	0	\$5,550 (5)
Linda Vaughey	1999 to 2004	15	901	272.33	60	44/0/2 (46)	14	\$44,100 (12)
We note that before Commissioners prior to Commissioner Higgins either did not dismiss complaints or did not archive the dismissals. The numbers of complaints for the following Commissioners include dismissals of complaints on non-substantive basis including the form of the complaint or lack of jurisdiction.								
Gordon Higgins	2004 to 8/2006	2	818	280.67	23	13/13/1 (27)	10	\$100 (1)
Dennis Unsworth	9/5/2006 to 2010	1	1,169	292.64	168	48/78/3(129)	49	\$105,455 (22)
Jennifer L. Hensley	01/2011 to 05/2011	29	977	564	2	7/3/1 (11)	40	\$450 (2)
David B. Gallik	05/23/2011 to 01/18/2012	1	1,249	436	19	22/9/2 (33)	26	\$2,850 (8)
James "Jim" W. Murry	02/06/2012 to 03/25/2013	1	1,379	263.48	74	22/31/1 (54)	46	\$25,750 (5)
Jonathan Motl	6/10/2013	4	1,213	565.26	9	19/2/0 (21)	35 as of 10-21-13	----

Election Year	Number of Complaints Filed	<u>Sufficiency Findings</u>		
1988	3	Forwarded to County Attorney: 94 Waived: 91 Co. Atty Initiated Action: 3		
1990	6			
1992	7	CPP did not enforce: 27 Settled: 55 CPP Initiated Civil Action: 5		
1994	20			
1996	15	<p align="center">THIS INFORMATION IS PRODUCED FOR THE FIRST TIME FOR THE SAVA MEETING OF OCTOBER 21, 2013. THIS INFORMATION MAY CHANGE AS WE FIND ADDITIONAL DATA OR LOCATE NEW INFORMATION ARCHIVES, SUCH AS DISMISSAL RECORDS FOR COMMISSIONERS PRIOR TO COMMISSIONER HIGGINS.</p>		
1998	7			
2000	9			
2002	13			
2004	19			
2006	39			
2008	59			
2010	61			
2012	62			
2014				

Yellow highlight = open case Purple text = campaign finance case Blue text = lobbying case Red text = ethics case

2010 COPP DOCKET

COPP	2010	CFP	1	Bitterrooters for Planning Action Committee v. Bitterroot Building Association
COPP	2010	CFP	2	Bitterrooters for Planning Action Committee v. Residents for Responsible Land Use
COPP	2010	CFP	3	Baker and Coombs v. Kierig and Ravalli Planning
COPP	2010	CFP	4	Coombs v. Candidates for Sense
COPP	2010	CFP	5	Wilcox v. Raser
COPP	2010	CFP	6	Ward v. Assembly Action Fund
COPP	2010	CFP	7	Bonogofsky v. Western Tradition Partnership
COPP	2010	CFP	8	Bonogofsky v. National Gun Owners Alliance
COPP	2010	CFP	9	Bonogofsky v. Assembly Action Fund
COPP	2010	CFP	10	Bonogofsky v. Montana Citizens for Right to Work
COPP	2010	CFP	11	Buell v. Footloose Montana
COPP	2010	CFP	12	Buell v. Montanans for Trap Free Public Lands
COPP	2010	CFP	13	Clark v. Assembly Action Fund
COPP	2010	CFP	14	Moser v. Jones
COPP	2010	CFP	15	Bonogofsky v. Kennedy
COPP	2010	CFP	16	Graybill v. Western Tradition Partnership
COPP	2010	CFP	17	Raffiani v. Montana Shrugged Tea Party Patriots
COPP	2010	CFP	18	Wittich & Miller v. Main Street Advocacy Fund & SEIU
COPP	2010	ETH	1	Fox v. Molnar Proposed Decision and Order (Confidentiality Waived)
COPP	2010	ETH	2	Fox v. Molnar Final Decision (Confidentiality Waived)
COPP	2010	ETH	3	Fox v. Molnar (Confidentiality Waived)

2011 COPP DOCKET

COPP	2011	CFP	1	Denowh v. Citizens for Strong Law Enforcement
COPP	2011	CFP	2	Gallagher v. Montana Conservation Voters
COPP	2011	CFP	3	Windom v. Cargill
COPP	2011	CFP	4	Cohenour v. Gibson
COPP	2011	CFP	5	Cohenour v. Montanans for Better Government
COPP	2011	CFP	6	Cohenour v. Montana Republican Party
COPP	2011	CFP	7	Scott v. Doyle
COPP	2011	CFP	8	Green v. Celebrate Billings
COPP	2011	CFP	9	Deschamps v. Bullock
COPP	2011	CFP	10	Hall v. Rehbein
COPP	2011	CFP	11	Essen v. InFocus
COPP	2011	CFP	12	MacLaren v. Stamey
COPP	2011	CFP	13	Noonan and Montana Democratic Party v. Daines
COPP	2011	CFP	14	Fitzpatrick v. Zook
COPP	2011	CFP	15	Olson and Eaton v. Van Dyk
COPP	2011	CFP	16	Kottel v. Montana Republican Party
COPP	2011	CFP	17	Ebinger v. Montana Republican Party
COPP	2011	CFP	18	Brenneman v. American Dream Montana
COPP	2011	CFP	19	Montana Democratic Party v. Edwards
COPP	2011	CFP	20	Montana Democratic Party v. Walker
COPP	2011	CFP	21	Belanger v. Higher Ground Foundation
COPP	2011	CFP	22	Meier v. Horn
COPP	2011	CFP	23	Montana Health Care Assn. v. Montanans for In-Home Care, SEIU 775, & SEIU 775 Montana

COPP	2011	CFP	24	Sands v. Montana Democratic Party
COPP	2011	CFP	25	Robinson v. Pippin
COPP	2011	CFP	26	Leichty v. Bitterroot Citizens for Responsible Government
COPP	2011	CFP	27	Hellegaard v. Copple
COPP	2011	CFP	28	Pitman v. Stevens
COPP	2011	CFP	29	Missoula County Republican Central Committee v. Missoula County Democratic Central Committee
COPP	2011	CFP	30	Vanmeter v. asksheriffluckylarson.com
COPP	2011	CFP	31	McCully v. Arts & Denton
COPP	2011	CFP	32	Baker v. KEY - Kids Education Yes
COPP	2011	ETH	1	S v. S (Rejected)
COPP	2011	ETH	2	Montana Republican Party v. Schweitzer Proposed Decision and Order - Penalty Phase (Confidentiality Waived)
COPP	2011	ETH	3	L v. S (Rejected)
COPP	2011	ETH	4	N v. B (Rejected)
COPP	2011	LOB	1	Smith v. Montana Shooting Sports Association and National Rifle Association
2012 COPP DOCKET				
COPP	2012	CFP	1	Greenwood and Montana Republican Party v. Wright
COPP	2012	CFP	2	Loney v. Montana Democratic Party
COPP	2012	CFP	3	Blake v. Vote Yes Whitefish
COPP	2012	CFP	4	Fox, Tussing v. Northwestern Energy, PPL Montana and Molnar
COPP	2012	CFP	5	Blake v. Vote Yes Whitefish/Jennifer M. Asebrook
COPP	2012	CFP	6	Morris v. Higher Ground Foundation, Inc.
COPP	2012	CFP	7	Motl v. Summit Independent Living Center, MHCA, and Montana Health Solutions
COPP	2012	CFP	8	Swingley v. Dutton
COPP	2012	CFP	9	Schott v. Brad Johnson
COPP	2012	CFP	10	Martin v. Freye
COPP	2012	CFP	11	Jordan v. Frenchtown Conservative Coalition
COPP	2012	CFP	12	Montana Republican Party v. Bullock & Montana Democratic Party
COPP	2012	CFP	13	DeLorenzo v. Cate
COPP	2012	CFP	14	Jensen v. O'Neill
COPP	2012	CFP	15	Blackbird v. Bukacek
COPP	2012	CFP	16	Legard v. Sanders County PAC
COPP	2012	CFP	17	Harrington v. 400% is Too High, Cap the Rate, Montana Women Vote, Montana Human Rights Network, AARP Montana, Rural Dynamics, Inc., NeighborWorks Montana, and Montana Community Foundation and its Endowed Fund, Women's Foundation of Montana
COPP	2012	CFP	18	French v. Sanders County PAC
COPP	2012	CFP	19	Burnett v. Montana Democratic Party
COPP	2012	CFP	20	Burnett v. Gallatin County Democratic Central Committee
COPP	2012	CFP	21	Hellegaard v. Copple
COPP	2012	CFP	22	Corbe v. Blyton
COPP	2012	CFP	23	Mitchell v. Copple
COPP	2012	CFP	24	Berry v. MEA-MFT and Democratic Legislative Alumni PAC
COPP	2012	CFP	25	Facey v. Carl
COPP	2012	CFP	26	Tuininga v. Bullock
COPP	2012	CFP	27	MacLaren v. Montana Conservative Coalition PAC

COPP	2012	CFP	28		Taylor v. Hale
COPP	2012	CFP	29		O'Brien v. Hill - Proceedings Stayed Pending 9th Circuit ruling on contribution limits
COPP	2012	CFP	30		Olson v. Bullock
COPP	2012	CFP	31		Wheeler v. American Dream Montana, Crowder
COPP	2012	CFP	32		Moog, Bucy v. Fox - Proceedings Stayed Pending 9th Circuit ruling on contribution limits
COPP	2012	CFP	33		Swope v. Bullock
COPP	2012	CFP	34		Essmann v. Patients and Families United
COPP	2012	CFP	35		Shannon v. Andrews
COPP	2012	CFP	36		Little v. Bullock
COPP	2012	CFP	37		Dick and Montana Democratic Party v. Edmunds - Proceedings Stayed Pending 9th Circuit ruling on contribution limits
COPP	2012	CFP	38		Dick and Montana Democratic Party v. Republican Leadership Committee
COPP	2012	CFP	39		Andrews v. Edmunds - Proceedings Stayed Pending 9th Circuit ruling on contribution limits
COPP	2012	CFP	40		Woodruff v. Baldwin - Proceedings Stayed Pending 9th Circuit ruling on contribution limits
COPP	2012	CFP	41		Royston v. Crosby
COPP	2012	CFP	42		Hart v. Bullock
COPP	2012	CFP	43		Munn v. Jayne
COPP	2012	CFP	44		Flynn v. Jayne
COPP	2012	CFP	45		Knight v. Jayne
COPP	2012	CFP	46		Hope v. Busby Voters Precinct 28 Big Horn County
COPP	2012	CFP	47		Tutvedt v. Roberts, American Tradition Partnership, Tax Payers for Liberty & National Association for Gun Rights
COPP	2012	CFP	48		Esp v. Direct Mail & Western Tradition Partnership
COPP	2012	CFP	49		Esp v. Lair, Faw & Baird
COPP	2012	CFP	50		Royston v. Malone
COPP	2012	CFP	51		Hardin v. Skinner and Ringling 5
COPP	2012	CFP	52		Madin v. Burnett
COPP	2012	CFP	53		Hamlett v. Montana Growth Network, Inc.
COPP	2012	CFP	54		Baker v. Great Falls Public Schools
COPP	2012	CFP	55		Loney v. Moore, Blewett, Jacobson & Boland
COPP	2012	ETH	1		Molnar v. Toole
COPP	2012	ETH	2		Fasbender v. Toole
COPP	2012	ETH	3		Montana Republican Party v. Schweitzer Final Order
COPP	2012	ETH	4		Berry v. Gallik
COPP	2012	ETH	5		Drake v. Mahoney
COPP	2012	ETH	6		Turner v. Threet
COPP	2012	LOB	1		Reid v. Montana Department of Justice
2013 COPP DOCKET					
COPP	2013	CFP	1		Madin v. Kitts
COPP	2013	CFP	2		Washburn v. Murray
COPP	2013	CFP	3		Madin v. Sales

COPP	2013	CFP	4		Hamlett v. McKamey
COPP	2013	CFP	5		Van Hyning v. Montana Growth Network
COPP	2013	CFP	6		Vincent v. Vincent
COPP	2013	CFP	7		Taylor v. Mowbray, Montana BASE, Montana Hunters & Anglers, B&H Ranch
COPP	2013	CFP	8		Roberts v. Tutvedt, Montana BASE, and Montanans for Quality Healthcare
COPP	2013	CFP	9		Hendry v. Vincent
COPP	2013	CFP	10		O'Neill v. Kahn
COPP	2013	CFP	11		Driscoll v. Montana Growth Network
COPP	2013	CFP	12		Pennington v. Bullock for Governor, et al.
COPP	2013	CFP	13		Bixler v. Suprock
COPP	2013	CFP	14		Loney v. Moore, Blewett, Jacobson & Boland
COPP	2013	CFP	15		Mikkelsen v. Montana Western Water Users Assn.
COPP	2013		16		UNAVAILABLE FOR USE
COPP	2013	CFP	17		Mowbray v. Taylor
COPP	2013	CFP	18		Madin v. Sales
COPP	2013	CFP	19		Berry v. Fanning
COPP	2013	CFP	20		Page-Nei v. Reynolds, Hester & O'Brien
COPP	2013	CFP	21		Reinlasoder v. Hanser
COPP	2013	CFP	22		Wells v. Lambert
COPP	2013	CFP	23		Womack v. Jenks
COPP	2013	CFP	24		Beal v. Unknown
COPP	2013	ETH	1		R v. O
COPP	2013	ETH	2		W v. L
					S:\Commissioner\COPP Docket of Complaints and Decisions.xlsx

COPP Campaign Reporting System					
Candidate Registration Business Requirements					
ID	Task		Begin	End	Comments
Candidate Registration Process Overview					
1	Current Processes	In process	10/1/2013	10/4/2013	
2	Future Processes	In process	10/1/2013	10/4/2013	
Candidate Registration Business Processes					
3	Access and Security		10/4/2013	10/11/2013	
4	Internet Home Page		10/4/2013	10/11/2013	
5	Admin Site Access		10/4/2013	10/11/2013	
6	Calendars & Control Data		10/4/2013	10/11/2013	
Registration via Internet					
7	Candidate Registration (C1 & C1A)		10/10/2013	10/15/2013	
8	Registration		10/10/2013	10/15/2013	
9	Registration Approval		10/10/2013	10/15/2013	
10	Amended Registration		10/10/2013	10/15/2013	
11	Code of Practices (C3)		10/10/2013	10/15/2013	
Inhouse Registration / Administration					
12	Candidate Registration		10/15/2013	10/17/2013	
13	Registration from paper forms		10/15/2013	10/17/2013	
14	Amended Registration		10/15/2013	10/17/2013	
15	Code of Practices (C3)		10/15/2013	10/17/2013	
16	Complete write-up and submit for review		10/15/2013	10/18/2013	
17	COPP Staff Review and comment		10/18/2013	10/23/2013	
18	Candidate Registration BP Complete		10/23/2013	10/23/2013	
Committee Registration Business Requirements					
Committee Registration Process Overview					
19	Current Processes		10/17/2013	10/18/2013	
20	Future Processes		10/17/2013	10/18/2013	
Committee Registration Business Processes					
21	Access and Security		10/21/2013	10/23/2013	
22	Internet Home Page		10/21/2013	10/23/2013	
23	Admin Site Access		10/21/2013	10/23/2013	
24	Calendars & Control Data		10/21/2013	10/23/2013	
Registration via Internet					
25	Committee Registration (C2)		10/23/2013	10/25/2013	
26	Registration		10/23/2013	10/25/2013	
27	Amended Registration		10/23/2013	10/25/2013	
28	Code of Practices (C3)		10/23/2013	10/25/2013	
Inhouse Registration / Administration					
29	Committee Registration		10/28/2013	10/31/2013	
30	Registration from paper forms		10/28/2013	10/31/2013	
31	Registration Approval		10/28/2013	10/31/2013	
32	Amended Registration		10/28/2013	10/31/2013	
33	Code of Practices (C3)		10/28/2013	10/31/2013	
34	Complete write-up and submit for review		11/1/2013	11/5/2013	
35	COPP Staff Review and comment		11/5/2013	11/8/2013	
	Candidate Registration BP Complete		11/8/213	11/8/2013	
Registration Systems Requirements					
Access and Security					
36	Access and Security		10/21/2013	10/23/2013	

COPP Campaign Reporting System

Candidate Registration Business Requirements

ID	Task		Begin	End	Comments
37	Internet Home Page		10/21/2013	10/23/2013	
38	Admin Site Access		10/21/2013	10/23/2013	
39	Calendars & Control Data		10/21/2013	10/23/2013	
	Registration via Internet				
40	Candidate Registration (C1 & C1A)		10/23/2013	10/25/2013	
41	Registration		10/23/2013	10/25/2013	
42	Amended Registration		10/23/2013	10/25/2013	
43	Committee Registration (C2)		10/25/2013	10/25/2013	
44	Registration		10/25/2013	10/25/2013	
45	Amended Registration		10/25/2013	10/25/2013	
46	Code of Practices (C3)		10/25/2013	10/25/2013	
	Inhouse Registration / Administration				
47	Candidate Registration		10/28/2013	11/1/2013	
48	Registration from paper forms		10/28/2013	11/1/2013	
49	Registration Approval		10/28/2013	11/1/2013	
50	Amended Registration		10/28/2013	11/1/2013	
51	Code of Practices (C3)		10/28/2013	11/1/2013	
52	Committee Registration		11/4/2013	11/8/2013	
53	Registration from paper forms		11/4/2013	11/8/2013	
54	Registration Approval		11/4/2013	11/8/2013	
55	Amended Registration		11/4/2013	11/8/2013	
56	Code of Practices (C3)		11/4/2013	11/8/2013	
57	Complete write-up and submit for review		11/11/2013	11/13/2013	
58	Data-base and development review		11/13/2013	11/15/2013	
	Registration Requirements Complete		11/18/2013	11/18/2013	

BEFORE THE COMMISSIONER
OF POLITICAL PRACTICES

Bonogofsky v. Kennedy No. COPP-2013-CFP-0015	Summary of Facts and Findings of Sufficient Evidence to Show a Violation of Montana's Campaign Practices Act
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Debra Bonogofsky of Billings was a candidate for the Montana House of Representatives, District 57, (HD 57) in the 2010 primary. On September 3, 2010 Bonogofsky filed a complaint with this Office. The complaint asserted specific campaign violations (failure to attribute and failure to report certain expenses) and it alleged illegal cooperation or coordination between the opposing campaign and several entities such that certain expenditures became coordinated contributions.

I. INTRODUCTION

This Decision presents and decides several issues dealing with non-candidate expenditures in a Montana election, in this case a primary election in a single legislative district (HD 57).¹ These expenditure issues have

¹ The Montana Legislature has 100 house districts. House District 57, as created by the 2000 redistricting commission, held its first election in 2004. In 2004 a Republican, Penny Morgan, won election and was reelected in 2006 and 2008. Morgan received more than 60% of the vote in each election, marking HD 57 as a solid Republican district. (Data from Secretary of State's website). In the 2010 elections no Democratic candidate filed for election in HD 57, and Penny Morgan did not run for reelection.

confounded Montana political candidates and this Office for the past three election cycles.

The 2010 HD 57 primary election involved two candidates, Debra Bonogofsky and Dan Kennedy. Candidates Bonogofsky and Kennedy each reported raising slightly over \$8,500.² Each candidate reported raising funds primarily from contributions from individuals living in the Billings, Montana area. (Commissioner's records). Kennedy defeated Bonogofsky in the June 8, 2010 primary election by a vote of 1,467 to 1,218 and, with no Democrat having filed, became a representative to the Montana legislature from HD 57. (SOS website).

Candidate Bonogofsky's campaign focused on door to door contact with HD 57 voters. Candidate Bonogofsky reported campaign expenses showing costs for candidate brochures/door hangers, directed mailings to groups of absentee voters and a staggered-in-time district wide mailing. (Commissioner's records and Bonogofsky interview with Commissioner's investigator).

In contrast, Candidate Kennedy focused his campaign on advertising and direct mail. At a minimum, Candidate Kennedy's campaign engaged in 9 direct mail efforts, including a mailer and 8 letters on which his or his wife's signature was placed (*see* Decision, below). In addition, third party entities mailed at least 7 election pieces and placed radio ads in favor of Candidate Kennedy and/or against Candidate Bonogofsky.

² Candidate Bonogofsky's report shows \$9,800 in receipts however \$1,000 of this amount was a loan, later paid back by the campaign. This leaves \$8,800 net in funds raised by the campaign.

Candidate Bonogofsky reported campaign expenses consistent with election activity favorable to her candidacy. Candidate Kennedy did not. There was far more election activity favorable to Candidate Kennedy and/or against Candidate Bonogofsky occurring than was reported in Candidate Kennedy's campaign reports or by any third party. (see Decision, below). This unreported, undisclosed 2010 HD 57 election activity is the focus of this Decision.

II. ELECTION EXPENSES

This Decision identifies and discusses a number of 2010 HD 57 election expenses that were not reported or disclosed by a candidate or third party. The Commissioner was able to identify election expenses, in part, based on documents supplied by members of the public.³ Further, the Commissioner reviewed records of Western Tradition Partnership (WTP), a non-profit corporation organized in the state of Colorado.⁴ WTP's records⁵, at one time in the possession of the Commissioner's office, are now in the possession of the

³ For an example of documents supplied by the public, please see detailed summary of election activity in the 2010 HD 61 election, attached as Exhibit 1 to this Decision. The documents necessary to make this summary were received and saved by members of the Esp extended family during the 2010 HD 61 election. John Esp was a candidate in the Republican primary in HD 61.

⁴ WTP was involved in 2008 and 2010 candidate elections in Montana. Commissioner Unsworth determined that some WTP 2008 election activities violated Montana campaign practice law as unreported independent expenditures. *Graybill v. WTP*, COPP-2010-CFP-0016. WTP challenged that decision in a Montana District Court. *WTP et. al. v. COPP*, No. BDV-2010-1120, 1st Judicial District, Lewis and Clark County. WTP's challenge has been dismissed by the Court. The Court is now considering awarding sanctions and fines against WTP.

⁵ There are 5 boxes of documents, formerly held by the Commissioner, now in the possession of the FBI, with federal possession of these documents taken through the power of a grand jury subpoena issued by a Federal Court. Two of these boxes of documents are the records and work product of the Commissioner's office that were deemed to be covered by the subpoena. The other three boxes consist of internal WTP documents showing WTP activity in elections held in Montana and Colorado. The WTP Records were delivered to the Commissioner by a third party who found them in a house in Colorado.

Federal Bureau of Investigation (FBI) office in Missoula, Montana. These “WTP records” and the documents provided by citizens, allowed the Commissioner to identify otherwise undisclosed and unreported HD 57 2010 election expenses, as set out in this Decision.

The expenditure of money in an election creates a visible election activity. That election activity is elemental in nature in that it cannot be reduced, excused or made to disappear. An election activity, once identified, falls into one of three types of election expense.

The first type is that of a candidate election expense. A candidate election expense includes money spent in an election that is contributed to and expended by a candidate. Candidate election activity, of course, is subject to contribution limits and must be attributed, disclosed and reported by the candidate. A candidate election expense includes a third party election expense coordinated with a candidate, as a coordinated expense is deemed to be an in-kind contribution to a candidate. (See below).

The second type election expense is that of a third party entity independent of a candidate, but focused on a candidate in the election. This election expense is called an “independent expenditure” and it too must be disclosed, reported, and attributed, albeit by the third party rather than the candidate. This expense, however, is not attributed as a contribution to a candidate and therefore it is not subject to contribution limits or to reporting by a candidate.

The third type of election expense is that made coincident to the election by a third party entity independent of a candidate, but with the use of the money focused on an issue and not on a candidate. This election expense is called “issue advocacy”. This issue advocacy expense is not considered to be a candidate expense and therefore is not subject to campaign practice requirements. Specifically, Montana law does not require that an issue advocacy expense be attributed, reported or disclosed.⁶

A limited discussion of the distinction between candidate, independent and issue advocacy election expenditures was made by the Commissioner in an earlier Decision: *MacLaren v. Montana Conservative Coalition*, COPP-2012-CFP-0027. The distinction between these election expenditures, with particular focus on an independent expenditure, is also discussed in accompanying companion decisions: *Bonogofsky v. Western Tradition Partnership*, COPP-2010-CFP-0007, *Bonogofsky v. National Gun Owners Alliance*, COPP-2010-CFP-0008, *Bonogofsky v. Assembly Action Fund*, COPP-2010-CFP-0009, and *Bonogofsky v. Montana Citizens for Right to Work*, COPP-2010-CFP-0010.

There is much of Montana’s election and candidate culture at stake in the distinctions in expenditures made during the time of an election, as defined by the above listed Decisions and by those that will shortly follow. We are a nation of laws. Montanans have long expressed their majoritarian view for open and fair elections with maximum reporting and disclosure of money spent

⁶ The 2012 Montana Legislative session considered several bills that would have required reporting and reporting and disclosure of any election expense, including issue advocacy, made within 60 days of the date of an election. None of these bills passed into law. A 2014 ballot initiative has been proposed to address this issue.

in elections. Candidates run with the expectation that they will not be bushwhacked by late, undisclosed and unreported expenditures. This Decision, and those that will follow, provide guidance to candidates and the public on coordination and the involvement of corporations in a candidate election.

III. SUBSTANTIVE ISSUES ADDRESSED

The substantive areas of campaign finance law addressed by this decision are: 1) Coordinated Expenditures; 2) Reporting of Contributions; and 3) Attribution.

IV. DISCUSSION AND FINDINGS

The following are the foundational relevant facts for a Decision in this Matter:

Finding of Fact No. 1: Ms. Bonogofsky was a 2010 Candidate for the Republican Party nomination to the Montana legislature from HD 57, Billings, Montana. Another candidate, Dan Kennedy, also sought the 2010 nomination by the Republican Party from House District 57 (Secretary of State (SOS) Website).

Finding of Fact No. 2: HD 57 was open in the 2010 primary election, with neither candidate being an incumbent.

Finding of Fact No. 3: The primary vote in Montana took place on Tuesday, June 8, 2010. Mr. Kennedy won the Republican primary election in HD 57 by a vote of 1,467 to 1,218.

Mr. Kennedy and Ms. Bonogofsky, as candidates in the 2010 HD 57 Republican primary election, were required by law to disclose, report and attribute all contributions to, and expenses by, their campaigns. The Commissioner notes that there are no offsetting constitutional speech issues to these campaign practice requirements. The holding of public office in Montana is a "public trust" (§2-2-103 MCA) and Montana's interest in preventing corruption of this public trust allows it to impose campaign practice requirements on a candidate for public office.

A. Attribution and Reporting of Expenditure

Candidate Bonogofsky complained that Candidate Kennedy failed to report expenditures (as required by §13-37-225 MCA) and did not "attribute" expenditures (as required by §13-35-225(1) MCA). The Commissioner determines this complaint by an examination of Candidate Kennedy campaign expenses and communications.

Candidate Kennedy reported 18 primary election expenditures on campaign finance reports filed with the Commissioner's office. These expenditures included 4 payments to Allegra Printing⁷ in Billings, 4 payments to Billings-area sign service businesses, and 2 payments to Direct Mail and Communications, Inc. (Direct Mail). Direct Mail was and is a Colorado for-profit corporation. It operated a print shop in Livingston, Montana.

⁷ The Commissioner's investigator requested and received copies of these documents directly from Allegra.

In resolving this part of the Decision, the Commissioner reviewed: all Kennedy campaign documents printed by Allegra, photos of Candidate Kennedy campaign signs attached to the complaint in this matter, a document provided by Candidate Kennedy⁸, a letter to HD 57 voters from Denise Kennedy provided to the Commissioner by a member of the public, and a number of Candidate Kennedy campaign documents contained in the WTP records. Based on this review the Commissioner was able to directly examine 7 Allegra Candidate Kennedy documents, 2 photos of Kennedy campaign banners, and 7 Candidate Kennedy letters printed by Direct Mail. Under Montana law Candidate Kennedy was required to "attribute" or place the "name and the address of the candidate or the candidate's campaign" on any such election communication, §13-35-225(1) MCA.

An attribution is an objective item. The required attribution is either printed or not printed on a campaign document. The Commissioner's objective review of the above listed documents and photos determined that the required attribution was lacking on at least 13 election communications made by candidate Kennedy. These include: one Allegra printed fundraising letter, three Allegra printed stickers, two large campaign signs, and all seven candidate Kennedy letters printed by Direct Mail.

⁸ The document reviewed was a Direct Mail bill to Candidate Kennedy. Candidate Kennedy, through counsel, provided 7 pages of campaign documents, refusing further production. Direct Mail, through counsel, refused the Commissioner's request for candidate Kennedy related documents, asserting that the Commissioner lacked authority to seek documents. Because sufficient documents or other evidence was gathered from the others sources the Commissioner issued this sufficiency decision. The challenges to investigation authority will be dealt with in another forum.

In addition, Candidate Bonogofsky alleged (and Candidate Kennedy admitted) that Candidate Kennedy did not report, as required by §13-37-225 MCA, the expense of tape measurers he affixed with campaign stickers and handed out to voters. (Commissioner's records).

Finding of Fact No. 4: Candidate Kennedy did not place the required attribution on thousands of campaign letters⁹ and other communications including signs and stickers.

Finding of Fact No. 5: Candidate Kennedy did not report campaign expenses, including the cost of tape measurers.¹⁰

Sufficiency Finding No. 1: There is sufficient evidence to justify a civil prosecution of Candidate Kennedy for failing to attribute, and/or report the expense of, those certain campaign communications described Findings of Fact 4 and 5.

B. Coordinated Expenses

Candidate Kennedy is also responsible for a failure to properly disclose, report and/or attribute any in-kind (non-monetary) third party election contribution to his campaign, including those coordinated with Candidate Kennedy by a third party. As defined by 44.10.323 (2) ARM an in-kind expenditure "...means the furnishing of services property or rights without charge or at a charge which is less than fair market value to a ...candidate...". Such in-kind services include the value of "staff time to draft the letter." (Commissioner Argenbright, *Daubert v. MCW/Orvis*, February 27, 1997 at p. 6.)

COPP regulations define a coordinated expenditure as "an expenditure made in cooperation with, consultation with, at the request or suggestion of, or

⁹ Direct Mail alone printed 7,000 candidate letters, none of which had a complete attribution.

¹⁰ Allegra records show that 3,000 campaign labels (none were attributed properly) were printed by Candidate Kennedy for use on tape measurers. The Commissioner reserves the right to add additional attribution and expenses based on new evidence discovered during any enforcement phase of this Matter.

the prior consent of a candidate..." 44.10.323(4) ARM. Commissioner Vaughey found such coordination based on a showing of "...prior knowledge, consent and encouragement ..." of the third party expense by the candidate. *Little v. Progressive Missoula*, July 22, 2004. A more detailed discussion of the legal elements of coordination, including a review of past coordination decisions by Commissioners, accompanies this Decision as Exhibit 2.

i. The 7 Direct Mail Letters

Candidate Kennedy's campaign finance reports show payment of \$3,057.50 to Direct Mail. Candidate Kennedy's campaign reports disclosed the Direct Mail expenses as "advertising, fundraising, direct mail." (Commissioner's records). The Commissioner's investigation in this Matter determined that Direct Mail produced 7 letters for candidate Kennedy (hereafter "7 Letters").¹¹

The Commissioner's review of WTP records further determined that the 7 Letters consisted of an introduction or "Intro letter" with survey, a "WIFE" letter,¹² four issue ID'd letters (gun, life, tax, spend/Right to Work) and a closing letter. (Direct mail bill, WTP records, Kennedy Folder, file cover).¹³ The Commissioner's review of WTP records included examination of: a draft (and final copy) of each of these 7 Letters, drafts of comparable letters for other WTP

¹¹ Candidate Kennedy generally refused to produce campaign documents but did produce 7 documents, including a June 5, 2010 bill from Direct Mail. That bill, together with the WTP records, shows that Direct Mail produced 7 candidate letters. Neither Candidate Kennedy nor Direct Mail produced copies of the 7 letters. The Commissioner gained copies of the 7 Letters from other sources.

¹² The Commissioner's review determined that WTP identified a letter from a candidate's wife as a "WIFE" letter.

¹³ The WTP records included a separate folder labeled "Kennedy HD 57". Copies of documents, such as drafts of the 7 Letters, were in the Kennedy folder.

endorsed 2010 Montana legislative candidates, candidate signature submissions (including candidate Kennedy's) for use on the letters, WTP plans for production and use of these letters in 2010 Montana legislative campaigns, Direct Mail's description of its printer/ mailing machines, and Direct Mail's method of stamping such letters.¹⁴

The 7 Letters are an election expense, reported at \$3,057.50 by Candidate Kennedy. This Decision determines whether or not the complete expense of the 7 Letters was reported and disclosed by Candidate Kennedy, including value of services. See 44.10.323 (2) ARM and above. Under COPP regulations, Candidate Kennedy was required to report as an in-kind contribution the "total value of the services" received as part of the preparation of these 7 Letters (44.10.513 ARM), including the value of "staff time to draft the letter". See *Daubert v. MCW/Orvis*, *supra*.

This requirement of disclosure of "total value" makes sense as Montana law dictates that "anything of value" (§13-1-101(7)(a) MCA) provided to a candidate is a contribution.¹⁵ In turn, all contributions must be reported and disclosed by the candidate (§13-37-225 MCA) so that voters and the opposing

¹⁴ The Commissioner notes that the documents reviewed in this Matter are numerous. The documents attached as Exhibit 3 are illustrative of the documents examined and used by the Commissioner.

¹⁵ The Commissioner identified 16 documents constituting an election expense that were mailed to 2010 HD 57 voters. These documents either promoted Candidate Kennedy's campaign or attacked Candidate Bonogofsky's campaign. Those 16 documents consist of: 7 candidate letters printed by Direct Mail, 2 documents (1 letter, 1 flyer) printed by Allegra, 5 attack letters from third party entities, and 2 attack Slicks. The same pattern of large scale election use of documents was employed in a number of 2010 legislative campaigns. Attached as Exhibit 1 is a summary of the most complete 2010 election document record reviewed by the Commissioner, that being the documents attacking Candidate Esp or promoting Candidate Boniek in the 2010 HD 61 Republican primary race. This summary is useful to acquaint the reader with the pattern of election document use as well as the role played by WTP and its aligned groups.

candidate know who is supporting a particular candidate for public office. If WTP or another entity was providing in-kind services in connection with any one of the letters and those services can be identified, then the value of those services must be reported. *Daubert v. MCC/Orvis, supra*. Valuation of any such identified services for reporting purposes is defined by 44.10.533 ARM as “fair market value.”¹⁶

1. The WIFE LETTER

One of the 7 Letters was a letter signed by Denise Kennedy, Candidate Kennedy’s wife, and mailed to an identified group of HD 57 voters (“WIFE letter”). As part of the \$3,057.50 paid to Direct Mail, Candidate Kennedy is listed as paying 65 cents for each WIFE letter (including postage) for a cost of \$714.35, and an additional 5 cents each for 1110 photographs that accompanied the WIFE letter for a cost of \$55.50. (WTP records, Kennedy file cover, Direct Mail bill).

The Denise Kennedy WIFE letter is undated but was mailed the last week of May, 2010, likely May 23.¹⁷ The Denise Kennedy WIFE letter, accompanied by a family photograph, was handwritten and printed with blue ink on pink off size (10” by 8”) paper. The letter bears the purported signature of Denise Kennedy. There is no attribution on the WIFE letter even though the letter implores a vote for Dan Kennedy in the June 8, 2010 election.

¹⁶ The Commissioner has retained an expert to set the fair market value, should it be necessary to do so in any enforcement action of this Matter.

¹⁷ On May 25, 2010 the Commissioner’s office received a copy of the Denise Kennedy WIFE letter, mailed to the Commissioner by a HD 57 voter.

The Commissioner did not receive the envelope in which the Denise Kennedy WIFE letter was mailed, but did receive an envelope for an identically formatted letter (blue ink, pink paper) that was signed by Marla Wagman in support of her husband, Pat Wagman (2010 Republican primary, SD 31) and placed in a pink envelope, hand addressed and mailed with a 44 cent stamp.¹⁸ The Commissioner determines that Denise Kennedy's letter was likewise hand addressed and mailed with a 44 cent stamp.

The Denise Kennedy WIFE letter is 5 pages in length (all handwritten) and discusses how Denise and Dan met, introduces their children, praises their marriage and extolls Dan Kennedy's virtues¹⁹. The Commissioner's examination further showed that WTP prepared a comparable WIFE letter for each candidate it supported in Montana's 2010 elections (WTP records).

The Commissioner's review determined that WTP interviewed each wife (using a survey form) to gain the information to draft the content of a WIFE letter. The draft was written and edited by WTP into the final WIFE letter text. A scribe was then engaged to carefully write out the final handwritten text and

¹⁸ The Wagman WIFE letter was received as part of the Esp family document archive. See Ex. 1. Wagman was also a candidate chosen for support by WTP. Marla Wagman's WIFE letter, unlike Denise Kennedy's, had a proper attribution.

¹⁹ The Commissioner's investigator determined, looking to mock-ups and notations on WIFE letter drafts, that there is common theme and carry-over phrases between WIFE letters. Further, the investigator observed that the wife's signature is generally added by the scribe, based on a sample signature from the wife. For example, the Investigator determined that the 2008 Susan Boniek HD 61 WIFE letters (primary and general elections) signatures appear to have been made by the scribe. This is in contrast to the 2010 HD 61 primary election where the Susan Boniek WIFE letter mock-ups in the WTP records show there was direction "to PDF to CL [Christian LeFer] rewrite 1st page not even/neat as other pages", indicating WTP had difficulty getting the scribe to prepare the letter as directed. The WTP records show that the 2010 HD 61 Susan Boniek WIFE letter was eventually computer generated with a scripted font. Susan Boniek then likely signed the computer generated 2010 WIFE letter and added a post-script in her own handwriting.

that text was cut, pasted and mocked up to fit the size of letter paper used for the candidate. A wife signature was added to each WIFE letter (*See n. 18*). The Commissioner viewed the mock-up in the WTP records showing that Denise's WIFE letter was so prepared. After mock-up, the Denise Kennedy WIFE letter was printed, inserted into a hand addressed pink envelope (along with a family photograph) and a 44cent stamp was used to mail the envelope.

The Commissioner takes administrative notice and determines that the 65 cents Candidate Kennedy paid for each such WIFE letter, at most, paid for the stamp, envelope, paper and ink. In making this determination the Commissioner incorporated information derived from Allegra invoice No. 80910. (Commissioner's records, *See Ex. 3*). Allegra's invoice, dated May 4, 2010, showed a charge to candidate Kennedy of \$1,103.72 to print, fold, and inkjet address 1,959 mailers.²⁰ This comes to a charge of 56 cents per mailer.

The Commissioner's recognizes that Allegra is an operating Montana business that offered services to the public 2010 at rates it designed to be competitive. Being competitive the 56 cents per mailer sets fair market value for a comparable service. Allegra charged 56 cents to print, fold and address a one page mailer. The Commissioner determines that the Direct Mail services provided to Candidate Kennedy in the production of the WIFE letter involved printing, folding and inserting multiple pages into an envelope as well as sealing and addressing the envelope. The Direct Mail services provided for

²⁰ Postage or "shipping" was separately charged by Allegra at \$470.16, or 24 cents per mailer. This is comparable to the 22 cents bulk rate paid by Direct Mail.

each of the 7 Letters were therefore greater than the Allegra services provided for the mailer.

The Commissioner, based on the above analysis and common sense, determines that Direct Mail's after postage charge of 21 cents (WIFE letter) to 23 cents for the 7 Letters, at most, covers the envelope, paper, and ink costs of the 7 Letters.²¹ The Commissioner also determines, based on the above information, that there were writing, editing, layout and production services of substantial value provided by WTP to Candidate Kennedy in connection with the Denise Kennedy WIFE letter (*See Daubert v MCC/Orvis*). The value of these services was not covered by any payment to Direct mail by Candidate Kennedy. The Commissioner determines Candidate Kennedy paid nothing to WTP for its services in writing, editing, layout and processing the Candidate Kennedy WIFE letter.

The Commissioner further determines that Candidate Kennedy cooperated with, knew of and approved of the WTP services involved in the Denise Kennedy WIFE letter. Candidate Kennedy was directly involved, through his wife, in the WIFE letter production, the content was approved by signature and candidate Kennedy partially paid for the letter. The Commissioner determines that candidate coordination lies under 44.10.323(4) ARM and *Little v Progressive Missoula, supra*. These unpaid, unreported and

²¹ Montana law, at ARM 44.10.513(1)(b)(ii) requires that Direct Mail report as an in-kind contribution "...the difference between the fair market value at the time of the contribution and the amount charged the contribute...". Candidates routinely engage businesses, such as Allegra, to provide goods or services for the candidate's campaign. There is no contribution involved so long as the candidate pays fair market value for the goods or services. If fair market value is not charged then the difference becomes an in-kind contribution to the candidate.

undisclosed services provided by WTP in regard to the WIFE letter met the definition of coordination and should have, but were not, reported as an in-kind contribution/expense to and by Candidate Kennedy.

Finding of Fact No. 6: The 65 cents Candidate Kennedy paid to Direct Mail per WIFE letter leaves 21 cents, after the 44 cent stamp cost is deducted. The 21 cents, at most, covered the cost of the paper, ink and envelope of each WIFE letter.

Finding of Fact No. 7: Candidate Kennedy received WIFE letter services in his 2010 HD 57 election, including preparation, design, layout, editing and handling of the WIFE letter.

Finding of Fact No. 8: Candidate Kennedy did not pay for, disclose or report the expense of services involved preparation, design, layout editing, or handling of the WIFE letter.

Finding of Fact No. 9: The WIFE letter services provided to Candidate Kennedy were provided by a corporation, whether through the WTP corporation or the Direct Mail corporation.

Finding of Fact No. 10: Candidate Kennedy knew of, consulted on and consented to the full range of WIFE letter services and therefore coordinated this activity with WTP and/or Direct Mail.

Sufficiency Finding No. 2: As shown by Findings of Fact 1 through 10, there is sufficient evidence to justify civil prosecution of Candidate Kennedy for accepting illegal corporate contributions to his 2010 HD 57 campaign in the form of coordinated in-kind expenses made by a corporation in connection with the WIFE letter.

Sufficiency Finding No. 3: As shown by Findings of Fact 1 through 10, there is sufficient evidence to justify civil prosecution of Candidate Kennedy for failing to disclose and report as in-kind contributions election related expenses associated with the WIFE letter.

The Commissioner recognizes that Candidate Kennedy “categorically denies” any coordination with WTP (see Kennedy answer to Bonogofsky complaint). That denial is not credible. The records listed above are sufficient

to show that Candidate Kennedy coordinated in the production of the WIFE letter and violated Montana law as set out in the sufficiency findings.

2. The Intro and Closing letters

Candidate Kennedy also engaged Direct Mail for an introduction (Intro) and a closing letter. (WTP records, Kennedy file cover²², Direct Mail bill). Direct Mail produced 2,616 Intro letters (50 cents each for \$1,308.00 cost) and 1,102 closing letters (45 cents each for \$495.90 cost) for Candidate Kennedy. Each Intro letter mailing included the outgoing envelope, the letter, a survey and return envelope the HD 57 voter could use to return the survey. (WTP records, Direct Mail bill).

The Commissioner determined the services provided by WTP through an examination of WTP Intro and closing letter records comparable to that set out above in regard to the WIFE letter. In particular, the Commissioner found that the WTP Kennedy file contained mock-ups for the Kennedy Intro letter showing that the four page Intro letter was prepared by cutting and pasting information specific to Candidate Kennedy into pages 1 and 4 (pages 2 and 3 were unchanged) of a "master" letter used by WTP for multiple legislative candidates. A masthead for Candidate Kennedy was then pasted on the final text. (WTP records).

The Commissioner's review found that Candidate Kennedy gave multiple samples of his signature to WTP. One of those signatures was selected by WTP and scanned into a printer menu. The Intro letter was then printed in black

²² The WTP records include a separate manila folder or file containing documents specific to the Kennedy campaign.

ink on 8 ½ by 11 tan paper (Candidate Kennedy's signature was printed in blue ink), folded, inserted into an envelope along with survey and mailed, engaging Direct Mail's rapid fire printing capacity. The Commissioner found a Direct Mail flyer in the WTP records wherein Direct Mail described itself as a "grassroots direct mail fortress" whose equipment included "computer controlled automated insertion technology" capable of printing, inserting and sealing letters at rate of over 1,000 per hour (WTP records). The closing letter was prepared using a similar approach (WTP records).

The Direct Mail flyer also described its equipment as including a rapid fire "stamp affixer" machine (WTP records). The Commissioner's review of WTP records determined that, except for special letters like the WIFE letter, 2010 Montana legislative election documents were mailed by Direct Mail under a presort standard rate stamp called the Patriotic Banner stamp which can be used by mailers of bulk quantities of items such as newsletters or notices.²³ The postage charge was 22 cents per document mailed when this stamp is used (WTP records, Investigator's Notes).

The Commissioner determined that the Candidate Kennedy Intro and closing letters were mailed using the Patriotic Banner stamp. The Commissioner, under the reasoning set out in regard to the WIFE letter, determines that the 50 or 45 cents Candidate Kennedy paid for each for each such letter, at most, paid for the stamp, envelope, paper and ink. Candidate

²³ WTP records and the Esp records show a systemic use by WTP and/or Direct Mail of the Patriotic Banner bulk rate stamp on documents that WTP/Direct Mail prepared, printed and mailed.

Kennedy paid nothing to WTP for its services in writing, editing, layout and processing the Intro or closing letters.

The Commissioner finds that Candidate Kennedy cooperated with, knew of and approved of the services involved in the Intro and closing letters. Candidate Kennedy signed the letters and partially paid for the letter. The Commissioner determines that candidate coordination lies under 44.10.323(4) ARM and *Little v. Progressive Missoula*, *supra*. These services provided by WTP in regard to the Intro and closing letters met the definition of coordination and should have, but were not, reported as an in-kind contribution/expense to and by Candidate Kennedy.

Finding of Fact No. 11: Candidate Kennedy received Intro and closing letter services in his 2010 HD 57 election, including preparation, design, layout, editing and handling of the letters.

Finding of Fact No. 12: Candidate Kennedy did not pay for, disclose or report the expense of services involved preparation, design, layout editing, or handling of the Intro and closing letters.

Finding of Fact No. 13: The Intro and closing letter services provided to Candidate Kennedy were provided by a corporation, whether through the WTP corporation or the Direct Mail corporation.

Finding of Fact No. 14: Candidate Kennedy knew of, consulted on and consented to the full range of Intro and closing letter services and therefore coordinated this activity with WTP and/or Direct Mail.

Sufficiency Finding No. 4: As shown by Findings of Fact 1 through 14, there is sufficient evidence to justify civil prosecution of Candidate Kennedy for accepting illegal corporate contributions to his 2010 HD 57 campaign in the form of coordinated in-kind expenses made by a corporation in connection with the Intro and closing letters.

Sufficiency Finding No. 5: As shown by Findings of Fact 1 through 14, there is sufficient evidence to justify civil prosecution of Candidate

Kennedy for failing to disclose and report as in-kind contributions election related expenses associated with the Intro and closing letters.

The Commissioner recognizes that Candidate Kennedy “categorically denies” any coordination with WTP (see Kennedy answer to Bonogofsky complaint). That denial is not credible. The records listed above are sufficient to show that Candidate Kennedy coordinated in the production of the Intro and closing letters and violated Montana law as set out in the sufficiency findings.

3. Issue ID letters

The Candidate Kennedy Intro, WIFE and closing letters discussed above, this Decision, did not go to all HD 57 Republican primary voters. Approximately 2,700 people voted in the 2010 HD 57 Republican primary and Candidate Kennedy received 1,467 of those votes. (See Finding of Fact 3). WTP planned a mass mailing of “letters and glossy postcards to ...tens of thousands of likely voters and issue ID’d lists” (see this Decision, page 25). Direct Mail described this mass mailing approach as a “shock and awe electoral bombing campaign” (see Exhibit 3).

The issue ID’d letters present the issue of just which voters were being “bombed” with the combined mailings from Candidate Kennedy and third parties. The Direct Mail bill to Candidate Kennedy states he was billed 45 cents each for 1,075 “issue” letters for a cost of \$483.75. The cover sheet to WTP’s Candidate Kennedy file also shows 1,075 issue letters but further defines “issue ID’d voters”, including 214 “gun” voters, 241 “life” voters, 219 “tax” voters, and 145 tax/right to work voters.

The Commissioner, by review of WTP records, has determined that WTP provided each candidate it chose to support, including Candidate Kennedy, with an identified list of issue ID'd voters in their legislative district.²⁴ The Commissioner takes administrative notice that such any list of identified voters has value (*see Wittich v. Campbell*, November 17, 2009). This applies to each Kennedy mailing, but particularly in this Issue ID'd mailing. The Commissioner finds that provision of likely voter lists, in particular issue ID'd lists, is an additional service value provided by WTP to Candidate Kennedy.

A review of WTP records relating to issue ID'd letters was conducted by the Commissioner comparable to that set out in regard to the WIFE letter. Based on that review the Commissioner determined that the Kennedy issue ID'd letters were two pages in length, printed on standard 8 1/2 by 11 inch paper stock with use of a scanned blue ink Candidate Kennedy signature. The Dan Kennedy masthead and the text of the letter were created by cutting and pasting "Dan Kennedy" onto the master letter used as a template for all such issue ID'd letters prepared by WTP for the 2010 Montana legislative candidates it supported.²⁵ As was the case with the Intro and closing letters the Candidate Kennedy issue ID'd letters were mailed using the bulk rate Patriotic Banner stamp. Specifically, four separate Candidate Kennedy issue ID'd letters were created (one for each group of ID'd voters) and mailed to each issue ID'd group of HD 57 voters. For example, the "gun" issue ID'd voters received a Candidate Kennedy letter stating his support of the 2nd amendment.

²⁴ Please see Exhibit 1 for a listing of the comparable approach in the 2010 HD 61 election.

²⁵ WTP used this issue ID's letter approach for multiple candidates in 2010 elections.

The Commissioner adopts and applies the reasoning set out in the WIFE letter determination (see above) and determines that writing, editing, layout and production services of substantial value provided by WTP to Candidate Kennedy in connection with the four issue ID'd letters. The Commissioner further determines that Candidate Kennedy paid nothing to WTP/Direct Mail for the services in writing, editing, layout and processing the Candidate Kennedy issue ID'd letters.

Finding of Fact No. 15: Candidate Kennedy received Issue ID'd letter services in his 2010 HD 57 election, including preparation, design, layout, editing and handling of the letters.

Finding of Fact No. 16: Candidate Kennedy did not pay for, disclose or report the expense of services involved preparation, design, layout editing, or handling of the Issue ID'd letters.

Finding of Fact No. 17: The Issue ID'd letter services provided to Candidate Kennedy were provided by a corporation, whether through the WTP corporation or the Direct Mail corporation.

Finding of Fact No. 18: Candidate Kennedy knew of, consulted on and consented to the full range of Issue ID'd services and therefore coordinated this activity with WTP and/or Direct Mail.

Sufficiency Finding No. 6: As shown by Findings of Fact 1 through 18, there is sufficient evidence to justify civil prosecution of Candidate Kennedy for accepting illegal corporate in-kind contributions to his 2010 HD 57 campaign in the form of coordinated in-kind expenses made by a corporation in connection with the Issue ID'd letters.

Sufficiency Finding No. 7: As shown by Findings of Fact 1 through 18, there is sufficient evidence to justify civil prosecution of Candidate Kennedy for failing to disclose and report as in-kind contributions election related expenses associated with the Issue ID'd letters.

The Commissioner recognizes that Candidate Kennedy “categorically denies” any coordination with WTP (see Kennedy answer to Bonogofsky complaint). That denial is not credible. The records listed above are sufficient to show that Candidate Kennedy coordinated in the production of the Issue ID’d letters and violated Montana law as set out in the sufficiency findings.

ii. Third Party Letters and Slicks

The Commissioner determined, above, that Candidate Kennedy signed (thereby accepting content) and partially paid for the 7 Letters discussed above. By so acting Candidate Kennedy was directly involved with the 7 Letters such that he directly showed coordination with WTP (see 44.10.323(4) ARM and *Little v. Progressive Missoula*) such that the fair market value of the accompanying letter services became an in-kind contribution to Candidate Kennedy’s campaign.²⁶

The Commissioner, by direct observation, has also identified an additional 7 documents that are election expenses in the 2010 HD 57 election in that the documents promoted the Candidacy of Candidate Kennedy and/or attacked Candidate Bonogofsky. These 7 documents included 5 survey related letters and 2 glossy attack flyers called “Slicks” by WTP.²⁷ There are no election expenses reported by any entity, including Candidate Kennedy, as to these 7 documents. The Commissioner must now determine who, if anyone, is responsible to report the value [i.e. “election expense”] of these documents.

²⁶ The Commissioner reserves his right to claim further fair market value deficiency as to the production costs Direct Mail charged Candidate Kennedy.

²⁷ These 7 documents are identified by direct observation. There may be more such documents that have not yet been identified.

The coordination determination as to these documents first requires that the Commissioner make determinations as to the relationship of third party entities involved with those documents. Those third party entities are WTP, Direct Mail, Assembly Action Fund, Montana Citizens for Right to Work, National Gun Owner's Association, Christian LeFer and Allison LeFer.

1. Third Party Entities

WTP's internal documents show that in early 2009 it began to seek funding, based on its claims of election success in 2008 Montana legislative campaigns, for election activities in 2010 Montana legislative races. (WTP "Confidential Overview", March 1, 2009.²⁸) WTP identified the HD 57 Republican primary election, along with a number of other races, as targeted 2010 Montana legislative races (WTP records).

WTP's Confidential Overview describes its planned use of documents in election activity forecast for a 2010 Montana legislative race, such as HD 57:

1. "Our ambitious Candidate survey program –the backbone of our election year lobbying program—was designed to mobilize the voters..."
2. "Surveys were first sent to candidates in the targeted primaries..."
3. The survey information was combined with other information to chose the pro-development candidate.
4. "In the final weeks of the election, letters and glossy postcards were sent to tens of thousands of likely voters and issue ID'd lists in our targeted races..."

²⁸ The WTP "Confidential Overview" was delivered to the Commissioner independent of the "WTP Records" as it was provided to the Commissioner by former WTP staffer Karolyn Loendorf.

A separate WTP document, the WTP 2010 Election year power point presentation²⁹, illustrates the tenor or some of these letters and postcards by showing 5 such WTP documents attacking candidates.

The Commissioner determines that Direct Mail and Allison LeFer are agents of and part of WTP as to any Candidate Kennedy election activity. Direct Mail's "shock and awe" electoral bombing capacity fit hand into glove with WTP's electoral action plan. There is a direct relationship between Direct Mail and WTP, making the two indistinguishable for the purposes of this Decision. Allison LeFer (aka Allison Andrews) was the President of Direct Mail in 2010.³⁰ Allison was also directly involved in WTP, signing the majority of WTP's checks at the same time. Allison LeFer is married to Christian LeFer (Commissioner's records).

Likewise, Christian LeFer is an agent of and part of WTP as to any Candidate Kennedy election activity. Christian LeFer is currently listed as one of 5 board members of American Tradition Institute, the 501(c)(3) adjunct to WTP (Commissioner's records). A March 1, 2009 internal WTP memorandum laying out an agenda for the 2010 Montana legislative elections lists Christian LeFer as WTP's "Director of Strategic Programming" (Commissioner's records). Karolyn Loendorf, a former WTP staffer, reported that it was Christian LeFer who hired her as a WTP staffer to work on 2010 legislative campaigns (Investigator Notes). Christian LeFer's name regularly appears in WTP records,

²⁹ Also produced to the Commissioner by Ms. Loendorf.

³⁰ Direct Mail and Communications, Inc. corporate documents list Allison Andrews a director and as President. Her address is listed as 1237 E. Amherst Circle, Aurora, CO.

including his April 2010 attempt to convince John Esp to withdraw as a candidate in the 2010 HD 61 Republican primary election against WTP's chosen candidate, Joel Boniek (*see* Ex. 1).

The Commissioner determines that Montana Citizens for Right to Work is an agent of and part of WTP as to any Candidate Kennedy election activity. The Commissioner's review of WTP files determined that Montana Citizens for Right to Work letters were handled in the same manner as WTP letters. The Montana Citizens for Right to Work letters were printed, handled and mailed by Direct Mail with Allison LeFer receiving a copy of the letter, presumably to confirm that it had been mailed.³¹ Both the WTP and Montana Citizens for Right to Work letters were placed in sleeves, files or held in envelopes in the same manner in the WTP records. Christian LeFer was a principal in the production of both the WTP and Montana Citizens for Right to Work letters, personally signing the last letter. The Commissioner determines that Montana Citizens for Right to Work letters were part of WTP's "backbone" of candidate survey attacks mounted in a "shock and awe electoral bombing campaign."

The Commissioner determines that Assembly Action Fund is an agent of and part of WTP as to any Candidate Kennedy election activity. The Assembly Action Fund was, for all practical purposes, unorganized in regard to the 2010 elections. The Assembly Action Fund was incorporated as a non-profit corporation in Colorado on May 25, 2010, two weeks before the June 8, 2010 election (Commissioner's records).

³¹ The Commissioner viewed the return letters addressed to Allison LeFer in the WTP records.

The Assembly Action Fund's presence in Montana is limited to use of its name on attack Slicks used in the 2010 legislative elections. The people who can be connected with the Assembly Action Fund have WTP connections (Commissioner's Records). Christian LeFer registered the Assembly Action Fund domain name (Commissioner's Records). Direct Mail operative, Jeremy Hofer, signed the purchase order for the radio ads against Candidate Bonogofsky and signed the Assembly Action Fund check paying for ads (Bonogofsky Complaint Document).³² The Commissioner's Investigator was unable to locate any people who would admit to connections with the Assembly Action Fund.

In addition to the WTP/Direct Mail connection through LeFer and Hofer, the WTP records include invoice No. 473 showing the cost of 13 Slicks used in ten 2010 Montana legislative races (see Ex. 3). The Commissioner found copies of each of the 13 Slicks in the WTP records and each of the Slicks was mailed under the Patriotic Banner bulk rate stamp. The Commissioner determines that Assembly Action Fund Slicks were printed and mailed by Direct Mail.

Invoice No. 473 shows 3,300 Slicks were printed and mailed attacking Candidate Bonogofsky on "Abortion" and "Main Street"³³. Additional Slicks attacked candidates: Dooling, HD 84; Moran, SD 35; Welch, HD 3; Esp, HD 61;

³² Jeremy Hofer was listed in the 2010 Direct Mail corporate documents as a director and corporate secretary. Hofer's address was listed as 1237 East Amherst Circle, Aurora, CO, the same address used by Allison LeFer.

³³ Bonogofsky had two runs of Slicks: 2,000 "HD 57 Bonogofsky Main Street Slick" and 1,300 "HD 57 Bonogofsky Abortion Slick". The cost per unit, including the 22 cent stamp, is 43 cents making the total invoice amount \$1,419 for the Bonogofsky Slicks.

Washburn, HD 69; Barnhardt, HD 4; Gilman, HD 71; Flynn, HD 68; and, Arthun, SD 31.

In the 2008 elections WTP created a front organization, the Coalition for Energy and the Environment, for use as the source of Slicks. (*See Graybill v. WTP*, COPP-2010-CFP-0016).³⁴ The Commissioner finds that the Assembly Action Fund is another such artifice created by WTP for use in the 2010 elections.

2. Attack Letters and Slicks

The Commissioner has determined, above, that Direct Mail, Christian LeFer, Allison LeFer, Montana Citizens for Right to Work and Assembly Action Fund are agents of and part of WTP as to any Candidate Kennedy election activity. The Commissioner's review has identified (discussed below) 7 attack letters or Slicks were sent out by WTP or its agents in regard to the Kennedy campaign.

The Commissioner now turns to an examination of nature of the election expense associated with these 7 attack letters of Slicks. None of the expense of these documents were reported or disclosed by any entity, including Candidate Kennedy (Commissioner's records). If there was coordination as to these documents Candidate Kennedy failed his duty to attribute, disclose and report the election expense of the survey documents and Slicks. Next, if the documents are not coordinated but are an "independent expenditure" in the

³⁴ WTP challenged the *Graybill* decision in district court. As part of that litigation a January 4, 2013 Order found that "WTP funded, controlled, and directed CEE during the 2008 election cycle in Montana". *WTP v. Murry*, No. BDV-2010-1120 1st Judicial District, Lewis and Clark County.

2010 HD 57 election then the third party entity responsible for the document would fail its duty to attribute, report and disclose the fair market value of the costs and services involved in the production of the 7 attack letters of Slicks. The only way that there is no reporting or disclosure is if the 7 attack letters of Slicks are "issue advocacy" rather than a coordinated or independent expenditure.

a. The WTP letter

Candidate Bonogofsky provided a copy of 4 page letter dated "Monday morning" and authored by WTP and sent to 2010 HD 57 voters. The letter was accompanied by a two page summary of HD 57 candidate survey results focused on property rights and taxes.

By direct observation the Commissioner determines that the WTP letter was double side printed on standard 8 1/2 by 11 inch yellow paper under the WTP masthead. The letter used an undated "Monday Morning" letter³⁵ approach and it was signed by Daniel Fuchs, WTP Director of Governmental Affairs. The tax and property rights approach taken in the survey and WTP letter resulted in the listing of Candidate Debra Bonogofsky's name 13 times, always negatively, in relation to the 2010 HD 57 primary vote while always listing Candidate Dan Kennedy's name positively.³⁶ The WTP letter was mailed using the bulk rate Patriotic Banner bulk rate stamp. The WTP letter is a

³⁵ WTP regularly used "Monday Morning" or other such salutations in lieu of a date in the documents it wrote in the 2010 elections. For example, Candidate Kennedy's Intro letter to HD 57 voters (a copy was attached to Bonogofsky's complaint), also written by WTP, used "Monday morning" in lieu of a date.

³⁶ The WTP Bonogofsky attack letter is, with adjustments, comparable to the attack letters WTP routinely sent in other 2010 elections.

follow up to survey and therefore is consistent with WTP's overall plan (see above) to use surveys, survey based attack letters and Slicks in 2010 Montana legislative race, such as HD 57. Further, the substance of the WTP letter is consistent with the substance of the companion issue ID'd letters mailed by Candidate Kennedy. Still further, the "Monday morning" letter in the 2010 HD 57 race was one of many comparable letters that WTP sent out in 2010 legislative races.

The Commissioner determines that the WTP attack letters exist, have value and are an election expense made by WTP in the 2010 HD 57 legislative race. As an election expense, Candidate Kennedy will be deemed to accept the WTP letter as a coordinated in-kind contribution if it is "an expenditure made in cooperation with, consultation with, at the request or suggestion of, or the prior consent of a candidate..." 44.10.323(4) ARM. Commissioner Vaughey found such coordination based on a showing of "...prior knowledge, consent and encouragement ..." of the third party expense by the candidate, *Little v. Progressive Missoula*, *supra*.

The 2010 elections, including the HD 57 elections, were the second election cycle for WTP involvement in Montana's legislative races. By far the most visible and controversial part of WTP's 2008 election activity had been its use of attack letters and slicks in 2008 legislative elections. (See *Graybill v. WTP*, 2010-COPP-CFP-0016). The Commissioner takes administrative notice that a candidate endorsed by WTP in the 2010 elections would have to know of and consented to the use of attack letters and Slicks, as such use was WTP's

signature electioneering brand. Further, the Commissioner interviewed two Republican primary candidates, John Ward (2008, HD 84) and John Esp (2010, HD 61). Both Ward and Esp told the Commissioner that any 2010 legislative candidate accepting WTP's endorsement had to know of or give consent to WTP's use of attack letters and Slicks.

In addition to imputed knowledge, the Commissioner finds that Candidate Kennedy's specific and companion use of issue ID'd letters keyed to the attack letter topics and the timing of those letters showed that Candidate Kennedy expected and knew his issue ID'd letters would be followed by third party attack letters or Slicks to the same group of voters. In *Little v. Progressive Missoula*, Commissioner Vaughey found that candidate Handler coordinated with another entity, a PAC called Progressive Missoula (PM), that spent money campaigning against Handler's opponent. Commissioner Vaughey found such coordination between a candidate and political committee based on a showing of "...prior knowledge, consent and encouragement ..." of the third party expense by the candidate, *supra*. The Commissioner finds that Candidate Kennedy meets this standard as to the WTP attack letter and the WTP attack letter is deemed a coordinated contribution to Candidate Kennedy.

b. The Montana Citizens for Right to Work Letter

Bonogofsky further provided copies of an 8 ½ by 11 inch survey-based three page letter issued under the name of Montana Citizens for Right to Work. The letter was signed by Christian LeFer, as Executive Director. The letter

attacked Candidate Bonogofsky and promoted Candidate Kennedy in the same manner described above in regard to the WTP letter.

The Montana Citizens for Right to Work letter was dated June 1, 2010 and by its own language the survey based attack letter was the second such letter sent out by Montana Citizens for Right to Work to 2010 HD 57 Republican primary election voters. The Commissioner's review of WTP records determined that two Montana Citizens for Right to Work attack letters were routinely sent in 2010 Montana legislative races, most four days apart under the dates of May 24 and May 28, 2010. While the Commissioner did not observe the Candidate Kennedy postage, the postage stamp used by Montana Citizens for Right to Work in comparable mailings in other 2010 candidate races is a non-profit bulk rate stamp.³⁷ Under the same reasoning set out above in regard to the WTP letter the Commissioner determines that Candidate Kennedy coordinated as to the Montana Citizens for Right to Work letters.³⁸

c. The National Gun Owner's Alliance letter.

Bonogofsky further provided copies of an 8 ½ by 14 inch survey-based letter signed by the National Gun Owner's Alliance. This letter attacked Candidate Bonogofsky and promoted Candidate Kennedy in a manner similar to that described above in regard to WTP. This letter was dated June 1, 2010

³⁷ The non-profit stamp is prepaid (at 5 cents a stamp) but additional charges are added depending on the weight and size of the mailing. The total charge will likely be less than the 22 cent Patriotic Banner bulk rate charge.

³⁸ There was a Right to Work political committee registered with the COPP for the 2010 elections. That political committee reported no in-kind or other contributions to Candidate Kennedy.

and by its own language was the second such letter sent out by the National Gun Owner's Alliance to HD 57 Republican primary election voters.

The National Gun Owner's Alliance letter is worded, and its use is timed in the 2010 HD 57 election, so as to be an election expense comparable to that of the WTP letter. There is a difference though. WTP is directly connected to Candidate Kennedy through writing, editing, handling and signature of letters. There are mock-ups, sample signatures, and numerous other indices in the WTP files showing the connection. The same is not true for the National Gun Owner's Alliance. Unlike other communications, the National Gun Owner's Alliance letter was mailed from Virginia, using a regular stamp rather than through Direct Mail making use of the Patriotic Banner bulk rate stamp. The Commissioner, despite an examination of the complete WTP records, found no document linking WTP or Candidate Kennedy to the National Gun Owner's Alliance.

The National Gun Owner's Alliance is a non-profit corporation based in the state of Virginia (Commissioner's records). It is intuitive that a Virginia based non-profit would have to be in contact with someone in Montana to send a properly timed and appropriately written letter in an obscure Montana primary election. However, that association, without an accompanying link such as exists for the WTP letter, is not enough to find coordination. Past Commissioners have refused to find coordination even though there was extensive crossover in personnel and activity. *See Harmon and Sweet v. Citizens for Common Sense Government, et. al.*, 12-31-1997 (Argenbright); *Close*

v. People for Responsive Government, 12-15-05 (Higgins); and *Keanne v. Montanans for a True Democrat*, 04-02-08 (Unsworth).

This does not mean that the National Gun Owner's Alliance election expenditure is free of reporting and disclosure. A separate independent expenditure analysis is made in the companion Decision *Bonogofsky v. National Gun Owners Alliance*, COPP-2010-CFP-0008.

d. Assembly Action Fund Slicks

Candidate Bongofsky asserted the expense of certain attack flyers or Slicks printed under the name of Assembly Action Fund were election expenses because the flyers attacked her candidacy while promoting the candidacy of Candidate Kennedy. Bonogofsky asserted that these election expenses became contributions, by coordination, to Candidate Kennedy.

The Assembly Action Fund is deemed to be an agent of WTP for the reasons set out above. Based on the same reasoning set out in regard to the WTP letter, the Commissioner finds that the costs of the Bonogofsky Slicks were coordinated with Candidate Kennedy.

Finding of Fact No. 19: The WTP letter, Montana Citizens for Right to Work letters, and the Assembly Action Fund Slick were election expenses in the 2010 HD 57 election

Finding of Fact No. 20: The in-kind election expenses in FOF No. 19 were not disclosed or reported as election expenses by any entity, including Candidate Kennedy.

Finding of Fact No. 21: The election expenses in FOF No. 19 were coordinated with Candidate Kennedy and became in-kind contributions to candidate Kennedy's campaign.

Finding of Fact No. 22: The election expenses of FOF No. 19 were made by a corporation.

Sufficiency Finding No. 8: As shown by Findings of Fact 1 through 22, there is sufficient evidence to justify civil prosecution of Candidate Kennedy for accepting illegal in-kind corporate contributions to his 2010 HD 57 campaign in the form of in-kind coordinated expenses made by a corporation in connection with the documents discussed in FOF No. 19.

Sufficiency Finding No. 9: As shown by Findings of Fact 1 through 22, there is sufficient evidence to justify civil prosecution of Candidate Kennedy for failing to disclose and report as in-kind contributions election related expenses in connection with the documents discussed in FOF No. 19.

Sufficiency Finding No. 10: The issue of whether or not the National Gun Owners Alliance letter is or is not an independent expenditure is dealt with by a separate Decision, *Bonogofsky v. National Gun Owner's Alliance* COPP-2010-CFP-0008.

The Commissioner recognizes that Candidate Kennedy "categorically denies" any coordination with WTP (see Kennedy answer to Bonogofsky complaint). That denial is not credible. The records listed above are sufficient to show that Candidate Kennedy coordinated in the production of the WTP and Montana Citizens for Right to Work letters, as well as the Assembly Action Fund Slicks, and violated Montana law as set out in the sufficiency findings.

V. SUMMARY OF CAMPAIGN PRACTICE VIOLATIONS

The Commissioner issued 10 sufficiency findings in this Matter. These included: failure to attribute (Sufficiency Finding No. 1); failure to report or disclose (Sufficiency Findings Nos. 1, 3, 5, 7, 9); and, acceptance of illegal corporate contributions through coordination (Sufficiency Findings Nos. 2, 4, 6, 8).

The sufficiency findings of failures to attribute, report and disclose as well as the finding of acceptance, through coordination, of illegal corporate contributions are substantial and significant. While each of these findings raise caution flags, the coordination findings are a flashing red light to 2014 candidates and their treasurers.

There has been one prior coordination finding by a Montana Commissioner of Political Practices, that being in *Little v. Progressive Missoula* by Commissioner Vaughey. The *Progressive Missoula* matter, however, involved far less services than are involved in this matter and the coordinating third party was a political committee, not a corporation. A political committee can contribute, subject to limits, to a candidate.

This Decision finds coordination by a corporation. While *Citizens United* allows a corporation to make independent expenditures in candidate elections, it did not strike the prohibition on corporate contributions to candidates. Acceptance of a corporate contribution by a Montana candidate, whether in cash or in-kind services, is illegal in any amount. See §13-35-227(2) MCA.

There is lag time in social adjustment when major changes occur in permissible activity, such as the changes made by the *Citizens United* decision. During that lag time opportunistic people and groups may emerge and promote activity, such as corporate involvement in candidate campaigns, that is risky or down right illegal. This Decision cautions candidates and treasurers that their agreement to partake in such behavior may leave them to pay the societal debt based on determination of error in behavior. In particular, the sufficiency

findings in this matter mean that Candidate Kennedy and/or his Treasurer Corey Stapleton, face potentially significant enforcement consequences. There may be similar enforcement consequences in any determination of a similarly postured candidate in other 2010 and 2012 elections.

The Commissioner hereby cautions 2014 candidates in Montana elections to avoid the sort of election entanglement or involvement with a non-profit or for-profit corporation that Candidate Kennedy had with WTP and/or Direct Mail. While a corporation may independently make election expenditures (as independent expenditures or issue advocacy), the best protection a candidate has from consequences like those of this Decision is to avoid election contact, interaction or interplay with a corporation unless that contact is fully paid for. That is what the law requires and it is what fair play with an opponent should dictate.

VI. Enforcement of Sufficiency Findings

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner cannot avoid, but must make, a decision as the law mandates that the Commissioner (“shall investigate,” *see*, §13-37-111(2)(a) MCA) investigate any alleged violation of campaign practices law. The mandate to investigate is followed by a mandate to take action as the law requires that if there is “sufficient evidence” of a violation the Commissioner must (“shall notify”, *see* §13-37-124 MCA) initiate consideration for prosecution.

Second, having been charged to make a decision, the Commissioner must follow substantive law applicable to a particular campaign practice decision.

This Commissioner, having been charged to investigate and decide, hereby determines that there is sufficient evidence, as set out in this Decision, to show that Candidate Kennedy and/or Treasurer Stapleton have, as a matter of law, violated Montana's campaign practice laws, including but not limited to §13-35-225, §13-35-227, §13-37-225, §13-37-226, §13-37-229, §13-37-230, MCA and all associated ARMs. Having determined that sufficient evidence of a campaign practice violation exists, the next step is to determine whether there are circumstances or explanations that may affect prosecution of the violation and/or the amount of the fine.

The many decisions to act or to not act made by Candidate Kennedy and/or Treasurer Stapleton in this matter were choices. Excusable neglect cannot be applied to such choices. See discussion of excusable neglect principles in *Matters of Vincent*, Nos. CPP-2013-CFP-007 and 011. Montana has determined that political discourse is more fairly advanced when election funding is kept fair and, through disclosure, the public is informed as to the identify of those who seek to influence elections. There can be no excuse for instances of failing to attribute, report and disclose, or for acceptance of corporate in-kind contributions, such as are involved in this matter.

Likewise, the amounts of money are too significant to be excused as *de minimis*. See discussion of *de minimis* principles in *Matters of Vincent*, Nos.

CPP-2013-CFP-007 and 011. With the above analysis in mind, this Matter is also not appropriate for application of the *de minimis* theory.

Because there is a finding of sufficient showing of violation and a determination that *de minimis* and excusable neglect theories are not applicable, civil adjudication and/or a civil fine is justified (see §13-37-124 MCA). This Commissioner hereby, through this decision, issues a “sufficient evidence” Finding and Decision justifying civil prosecution under §13-37-124 MCA. This matter will now be submitted to (or “noticed to”)³⁹ the Lewis and Clark County attorney for his review for appropriate civil action (see §13-37-124(1) MCA). Should the County Attorney waive the right to adjudicate (§13-37-124(2) MCA) or fail to initiate civil action within 30 days (§13-37-124(1) MCA) this Matter returns to this Commissioner for possible adjudication.

Campaign practice violations, of the nature and scope encountered in this Matter, are new to the modern era Montana politics.⁴⁰ Montana’s second Commissioner, Peg Krivec, served her entire 6 year term (1981-1986) without issuing a Decision. Subsequent Commissioners Colberg, Vaughey, and Argenbright issued decisions that generally provided a platform for earnest political participants to pay a fine for the mistake and adjust future election activity to conform with rulings.

³⁹ Notification is to “...the county attorney in which the alleged violation occurred...” §13-37-124(1) MCA. The failure to attribute occurred in Yellowstone County and the failure to report occurred in Lewis and Clark County. This Commissioner chooses to Notice this matter to the county attorney in Lewis and Clark County.

⁴⁰ This type of systemic violations in Montana’s past gave rise to many of Montana’s current campaign practice laws.

In contrast, the parties in this Matter have, to date, been unwilling to accept or adjust to Montana's expectations of appropriate election behavior. WTP has, to date, aggressively pursued a self-determined approach to involvement in Montana elections. Candidate Kennedy also demonstrates an equally self-determined view of appropriate election activity. Treasurer Stapleton must, to a degree, accept the consequences of any failures in the Kennedy campaign election activity. Stapleton is required by law to "keep detailed accounts of all contributions received and expenditures made..." (§13-37-208 MCA) but he was unable to produce or assist in producing such accounts. Further, it appears that he allowed his name to be used for campaign purposes without actually attempting to fulfill his statutory duties.

Commissioners have rarely found it necessary to seek the full legal redress allowed by Montana law against a candidate or treasurer.⁴¹ Full legal redress is imposed by a district court judge and comes only after a full due-process district court hearing whereat the candidate may provide evidence and confront witnesses, including the Commissioner. The Commissioner notes that if adjudication proves necessary in this Matter appropriate full legal redress includes ineligibility of adjudicated offender to be a candidate for, or to hold, public office (see §13-35-106(3)MCA). In addition the offender can be assessed a fine of up to three times the amount of the unlawful contribution or expenditure (see §13-37-128 MCA).

⁴¹ Commissioners have filed district court enforcement actions in several Matters. After filing these Matters settled without active district court enforcement litigation.

A 2014 candidate for election in Montana should carefully consider the substantial nature of redress for violations of Montana Campaign Practices Act. The full range of redress has been applied once, before the Commissioner's office was established and before the current codification of Montana law. In *Kommers v. Palagi*, 111 Mont. 293, 108 P2d 208 (1940) the Montana Supreme Court upheld the removal of Sheriff Palagi from office of the elected sheriff of Cascade County under Montana's Corrupt Practices Act (the predecessor law to Title 13, MCA). Palagi was determined to have submitted false campaign account records and to have used a "slush" fund, consisting of excess mileage and board reimbursement for prisoners, as a secret campaign fund from which he purchased pencils, beer and sewing kits to give to potential voters. The court specifically found that the pencils and "handy menders" were articles of value distributed by the candidate and his deputy sheriffs as his political agents with the intent to influence votes contrary to the provisions of law. *Id.*, 111 Mont. at 308, 108 P2d at 215.

The politics of 1940 must have been corrosive to lead to a *Palogi* application of full redress of law by a court of law. The politics of 2013 may be corrosive enough to lead to a similar application full redress today. Under Montana law the Commissioner can and will pursue a full redress result if that is what is required to arrest the type of election expense activity addressed in this Decision. The Commissioner cautions 2014 candidates to take heed of this Decision and to avoid such election activity in 2014 campaigns. Such avoidance can only be good for all Montanans as it leads to better and fairer

elections which, in turn, leads to better acceptance of election results and better governance for us all.

VII. CONCLUSION

Based on the preceding discussion, as Commissioner, I find and decide that there is sufficient evidence to show that Candidate Kennedy and/or Treasurer Stapleton violated Montana's campaign practices laws as set out above and that civil adjudication of the violation is warranted.

Dated this 16th day of October, 2013.



Jonathan R. Motl
Commissioner of Political Practices
Of the State of Montana
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Helena, MT 59620
Phone: (406) 444-4622

Exhibit 1
Bonogofsky v. Kennedy COPP-2010-CFP-0015

The *Bonogofsky v. Kennedy* Decision summarizes election actions orchestrated by Western Tradition Partnership (WTP) through 16 direct mail pieces in support of Candidate Kennedy and/or in opposition to Candidate Bonogofsky in the Montana 2010 HD 57 Republican primary election. This document is a summary of comparable direct mail election actions orchestrated by WTP in support of Candidate Joel Boniek and/or in opposition to Candidate John Esp in the 2010 HD 61 Republican primary race. This summary provides a further example of the election related surveys, letters and attack pieces used by WTP to enhance the election of its chosen candidate in 2010 legislative elections.¹ The primary election was set for June 8, 2010. In the two months leading to the following WTP related election actions took place in the HD 61 race:

1. Direct contact with Esp by WTP: On April 4, 2010 WTP, through Christian LeFer, called Candidate Esp. LeFer tried to talk Esp out of running, calling Boniek a beacon of hope to so many. LeFer also accused Esp of spreading rumors about Boniek and threatened to run

¹ John Esp has a number of family members living in HD 61. Mr. Esp has provided the Commissioner with the Esp family archive of WTP orchestrated actions related to the 2010 Republican primary. The ESP family archive, added to information in the WTP files, created a comprehensive record of WTP activity in the 2010 HD 61 Republican primary election.

a “dirty campaign” against Esp in retaliation (Esp notes, Esp Campaign records).

2. Six Surveys: During May 3 through May 10, 2010 Candidate Esp received 6 candidate surveys -- those being from the National Gun Owners Alliance, Montana Citizens for Right to Work, WTP, the National League of Taxpayers, the National Pro-Life Alliance, and the Montana Tea Party Coalition. *Id.*
3. Boniek letter and Survey: In this same early May 2010 period Boniek sent an undated “Monday morning letter” announcing he was running for the HD 61 nomination, asking for money and enclosing a voter survey. *Id.*
4. 5 to 10 Attack Letters Based on Survey Results: During May 24 through June 1 the National Gun Owner’s Alliance, National Prolife Alliance, Montana Citizens for Right to Work and WTP sent two letters each to HD 61 voters, each letter promoting Candidate Boniek and/or attacking Candidate Esp centered on the June 8 primary election in HD 61. *Id.*
5. 4 Boniek issue letters: Also during May 24 through June 1 Candidate Boniek sent four more letters on issues (abortion, taxes, spending and guns) to groups of HD 61 voters who were ID’d as favorable to his position on these issues. *Id.*

6. 3 final Boniek letters: On June 3, 2010 two people with WTP connections (Lair and Faw) sent a letter attacking Esp. Susan Boniek sent a letter [WIFE letter] imploring a vote in favor of her husband and Candidate Boniek sent a final 6 page candidate letter seeking votes. *Id.*
7. 6 attack Esp pieces: During the final weeks of the campaign 6 glossy fliers (Slicks) attacking Candidate Esp were mailed or handed to HD 61 voters by four groups: WTP attacked Esp twice on tax/spend and inheritance taxes; Assembly Action Fund attacked Esp on supporting Planned Parenthood; the Sportsman's Rights PAC attacked Esp as opposing "pro-gun hero Joel Boniek", the Montana Conservative Alliance attacked Esp as being supported by unions; and an anonymous "fact check" piece attacked Esp for failing to return surveys. *Id.*
8. The NRA sent postcards to its membership supporting Boniek. *Id.*

The *Bonogofsky v. Kennedy* decision determined that WTP (partly through its agent, a for-profit corporation called Direct Mail and Communications) wrote, edited, printed, stamped and mailed all letters sent by Candidate Kennedy. Excluding the surveys (which only went to the candidate) Candidate Boniek was promoted or Candidate Esp attacked by 24 direct mail pieces, as set out above.

Exhibit 2
Bonogofsky v. Kennedy, COPP-2010-CFP-0015

This Exhibit supplements the legal discussion of coordination, as introduced in the above Decision. This discussion is incorporated by reference into the Decision as though set out in full therein.

An expenditure that is deemed to be “coordinated” between a candidate and another entity or person is treated as though it is a contribution to and/or expense by the candidate’s own committee. Contributions to a candidate are limited in amount from any source and prohibited completely from a corporate source. (See §§13-35-227, 13-37-216, MCA). Because a coordinated third party election expense is deemed to be a contribution it becomes subject to the limits and prohibition of these laws.

A third party, including a corporation, can participate in an election through an independent expenditure. An independent election expenditure is subject only to reporting and attribution and is not subject to contribution limits or bans. The Courts, in upholding coordination findings, have recognized that there is a temptation to go past an independent expenditure and coordinate:

Independent expenditures “are poor sources of leverage for a spender because they might be duplicative or counterproductive from a candidate’s point of view” (citing to *FEC v. Colo. Republican*, 533 US 431 at 446 (2001)). By contrast, expenditures made after a ‘wink or nod’ often will be “as useful

to the candidate as cash.” (*Id.* at 442, 446). For this reason, Congress has always treated expenditures made “at the request of suggestion of” a candidate as coordinated.

McConnell v. FEC, 540 U.S. 93, 224 (2003).

This circumvention of limits, through coordination, is not allowed: “Moreover, recent cases have recognized that certain restrictions on corporate electoral involvement permissibly hedge against ‘circumvention of [valid] contribution limits.’” 540 U.S., at 205, 124 S. Ct. 619, 157 L. Ed. 2d 491 (quoting *Beaumont*, 539 U.S., at 155, 123 S. Ct. 2200, 156 L. Ed. 2d 179, in turn quoting *FEC v. Colorado Republican Federal Campaign Comm.*, 533 U.S. 431, 456 and n. 18, 121 S. Ct. 2351, 150 L. Ed. 2d 461 (2001) (*Colorado II*), (alteration in original).

Montana’s definition of coordination is similar to that of federal law. Section 44.10.323(4) ARM defines coordination as “an expenditure made in cooperation with, consultation with, at the request or suggestion of, or the prior consent of a candidate...”

Commissions and Commissioners have found coordination only in particular circumstances. The FEC, while advancing a new coordination regulation in 2012 (11 C.F.R. §109.21(d)(4)), operates under a 6 member commission structure and that commission has deadlocked on basic enforcement decisions. Richard Briffault, *Coordination Reconsidered*, Colum. L. Rev., (May 2013). In regard to coordination, the FEC has found that there needs to be more than common vendors, interrelated individuals (as in a

former employee of the candidate) and shared contacts. Thus, the FEC has not found coordination unless there is actual evidence showing the coordination between the expenditure and the candidate. *Id.*

Past coordination decisions by Montana Commissioners show similar approach to that of the federal decisions. Commissioner Argenbright considered a complaint that a political committee, Citizens for Common Sense Government (CCSG), and six candidates for the Missoula City council were coordinated or linked such that CCSG was a candidate committee subject to contribution limits. *Harmon and Sweet v. Citizens for Common Sense Government, et. al.*, December 31, 1997. Despite extensive crossover in involvement (participation in parade using same mode of transportation) and people, the Commissioner found no coordination because there were “no notes, memoranda, records of telephone conversations, correspondence or other documents” supporting “coordination, cooperation or consultation”. *Id.* p. 19. Further, there was “little, if any, similarity” in campaign literature. *Id.* p. 23.

Likewise, Commissioner Higgins rejected coordination between a candidate and a political committee that engaged in attack activity against the opposing candidate. *Close v. People for Responsive Government*, December 15, 2005. The Commissioner found crossover contributors between the political committee and the candidate but found no evidence of communication or activity showing coordination between the candidate and committee.

Likewise Commissioner Unsworth rejected coordination in *Keanne v. Montanans for a True Democrat*, April 2, 2008. The Commissioner noted

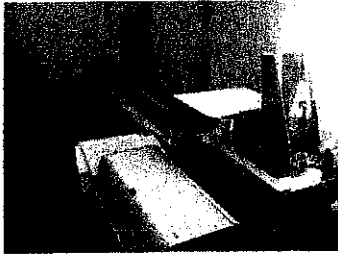
crossover contributions/activity by people involved in both the candidate campaign and the political committee but found no coordination because “...there is no evidence that MTDC’s expenditures for newspaper and radio ads, billboards, and campaign flyers opposing candidate Keane and supporting candidate McAdam were made with the prior knowledge, consent and encouragement of McAdam or his campaign.” *Id.* p. 9. In addition the Commissioner found that the crossover communication was “limited” and that it was personal and not on behalf of the political committee. *Id.*

In contrast to the above three decisions, Commissioner Vaughey found coordination in *Little v. Progressive Missoula*, July 22, 2004. The Commissioner, identified crossover activity, finding that members of the Progressive Missoula steering committee were directly involved in the candidate’s campaign (Allison Handler). Further, the Commissioner found specific evidence showing that Handler and the individual committee members knew of the negative attack role that Progressive Missoula would play in support of the candidate’s campaign. The Commissioner found that certain barriers between the Handler campaign and Progressive Missoula, including a letter of reproach from Progressive Missoula to Handler, were artifices designed to disguise the real cooperation. The Commissioner found that the PM’s expenditures for flyers opposing candidate K. were made with “...prior knowledge, consent and encouragement of Handler...”. Thus they were coordinated expenditures.

The predecessor decision to this Matter (*Graybill v. Western Tradition Partnership*, COPP-2010-CFP-0016 (Commissioner Unsworth)) focused on WTP's activities in 2008 elections in Montana and, while noting shared staffing, did not find coordination, *id* p. 28. Graybill noted "concern and healthy skepticism" as to coordination but spent little time on coordination and instead focused on and found express advocacy.

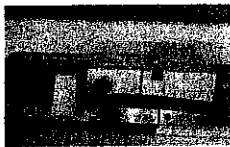
Ex 3

Direct Mail & Communications, Inc. YOUR One-Stop, Turnkey Grassroots Direct Mail Fortress! Just the highlights . . .



37,000 address-per-hour Rena Imager 2.5 (new in late 2008). State of the art envelope/postcard/reply addresser delivers a combination of high speed and high quality. Keep hands, feet, and Afghan dogs far from this machine if you know what's good for you.

Formax 6402 Folder-Inserter is the state of the art in computer-controlled automated insertion technology. Currently set up as a 4-station unit, the 6402 can turn flat stacks of two-page letter, reply (even legal), and BRM into a sealed package at nearly 1,500 per hour. Max speed is 3,000 envelopes per hour, depending on number and configuration of inserts.



What can we say? This old Hasler 200 may not meet today's "Red-Meter" postal specs, but perfectly sealing envelopes with it sure beats licking thousands of envelopes at a time.

Here, we invite you to burn with envy over our stamp-affixer, and added to our lineup in mid- October 2008. Many a volunteer has been spared an early bout of arthritis by utilizing this handy machine, which sits atop the venerable but otherwise-outdated Hasler 350 red-meter/sealer. Come visit our shop, and perhaps we'll let you look at it!



Finally, last but not least, the infamous "wall of Riso's" – reminiscent of the Iraqi "Highway of death" – and equally as destructive to those who would stray into the path of one of Direct Mail's "shock-and-awe" electoral bombing campaigns. These Riso 3750's are capable of producing 28,000 prints per hour in 7

available colors. **DM&C: CONTENT, DESIGN, PRODUCTION, & POSTAL SERVICES.**



Invoice No.

473

INVOICE**Customer**Name Assembly Action FundAddress PO Box 3662City Lewistown State MT ZIP 59457

Phone _____

Date 6/10/2010

Order No. _____

Rep _____

Qty	Description	Unit Price	TOTAL
1500	HD 3 Welch Main Street Slick	\$0.43	\$645.00
1000	HD 4 Barnhart Main Street Slick	\$0.43	\$430.00
2000	HD 57 Bonogofsky Main Street Slick	\$0.43	\$860.00
1,500	HD 71 Gilman Main Street Slick	\$0.43	\$645.00
2,000	HD 69 Wasburn Main Street Slick	\$0.23	\$460.00
1,503	HD 84 Dooling Main Street Slick	\$0.43	\$646.29
2,143	SD 31 Arthun Main Street Slick	\$0.43	\$921.49
1,000	SD 35 Moran Main Street Slick	\$0.43	\$430.00
1300	HD 57 Bonogofsky Abortion Slick	\$0.43	\$559.00
1,500	HD 61 Esp Abortion Slick	\$0.43	\$645.00
1,129	HD 68 Washburn Abortion Slick	\$0.43	\$485.47
1499	HD 68 Flynn Main Street Slick	\$0.43	\$644.57
1,282	HD 84 Barnhart Slick- first class postage & two colors	\$0.54	\$692.28

Payment Details☐☒☐

Check

Name _____

Check #: _____

SubTotal \$8,064.10

Discount/Contribution
Taxes State**TOTAL** \$8,064.10

Office Use Only

also purchased \$ 3,524 in Radio

Thank you for your business!

Direct Mail & Communications
P.O. Box 11695
Bozeman MT 59718
United States

Client Billing

Invoice #:	Kennedy
Date:	June 5, 2010
Amount Due USD:	\$557.50

Item	Description	Unit Cost (\$)	Quantity	Price (\$)
Print	Intro Letters to Abs mailed 5/10	0.50	2019	1,009.50✓
Print	Intro Letter to PPV	0.50	597	298.50✓
Print	additional 3X4 photos	0.05	1110	55.50
Print	Issue Letter	0.45	1075	483.75
Print	Wife Letter	0.65	1099	714.35✓
Print	Final Letter	0.45	1102	495.90
Subtotal:				3,057.50
Total:				3,057.50
Amount Paid:				-2,500.00
Balance Due USD:				\$557.50



Dan Kennedy

ALLEGRA PRINT & IMAGING
2620 Overland Ave.
Billings, MT 59102
406-248-6811 • Fax 406-248-6135

INVOICE

No. **80910**

Date 5/14/10

Customer P.O. No.

QUANTITY	DESCRIPTION	AMOUNT
1,959	Mailer, 11 x 12 White 80# Vector Text Gloss, folded to 11 x 6, printed 4 colors front in Process ink, 4 colors back in Process ink	1,103.72
	Cutting	
1,959	Half fold	
	List Processing/NCOA/Dedupe	
1,959	Inkjet Addressing	
Sales Rep: Al Taken by: al Account Type: COD Allegra is your source for promotional products. Search the world's largest database of promotional items at www.allegranetwork.com/billings by clicking on the "Promote Your Brand" link.		SUB 1,103.72
		TAX 0.00
		SHIPPING 470.16
		TOTAL 1,573.88

Western Tradition Partnership

Confidential Overview

FOR REVIEW

Prepared for XXXXXXXXXX
MONTH 1, 2009

Grassroots Membership Development Proposal

Western Tradition Partnership is a 501(c)(4) grassroots lobbying organization dedicated to fighting environmental extremism and promoting responsible development and management of natural resources in the Rocky Mountain West and across the United States.

WTP is the only single-purpose organization of its kind. Founded by committed activists, we have the kind of credibility on these issues that only an independent grassroots group can earn. In addition, the Partnership also works alongside our sister 501(c)(3) Western Tradition Institute, as well as an energy-oriented 527, and will form state-level PACs and SDCs as needed.

Our goals are achieved through hard-hitting issue advocacy including legislative lobbying, electioneering, grassroots mobilization and public education campaigns.

Western Tradition Partnership is committed to advancing a voluntary, free-market approach to partnering with the business community to promote beneficial environmental stewardship. This is the only *economically* sustainable way to protect and preserve our environment. We put the lie to the fallacy that free people will choose to poison their own water, air, and land.

WTP's message is simple as it is effective: Politicians who pursue a radical environmental agenda without regard for the rights and needs of their constituents must either change their minds, or voters will opt for candidates who more closely match their values. Once elected, officeholders who credit their success up to hard-core "green" activist groups are unlikely prospects for even the most effective and well-funded Capitol lobbyists.

Our effectiveness hinges on the fact that the majority of Americans agree with our objectives, and will influence policy and policymakers out of self interest on economic and environmental issues; e.g., lobbying or voting against those who would increase their electric bill.

In fact, polls consistently show that the majority of Americans believe that their fellow citizens and businesspeople can be responsible stewards of the earth *without* excessive, costly, and often environment-damaging government intervention. Though they may agree with the intent, they realize they cannot afford the measures proposed by environmental extremists.

To the contrary, Americans overwhelmingly support responsible energy exploration and development, proper forest management (e.g., harvesting the pine bark beetle kill), wisely extracting other precious resources, and protecting private property and water rights.

That's why it should be no surprise that balanced, free-market solutions continue to gather support from the grassroots – because they will help, not hurt, families, jobs and the American economy – and they must be advanced in the face of anti-business, environmentalist hysteria.

Lower energy prices, jobs, and school and infrastructure funding are presented by WTP primarily as simple kitchen table issues; WTP has shown that citizens can be mobilized to action by tying responsible development to positive personal and economic outcomes.

Environmental issues like the so-called Global Warming crisis are clearly seen by the Left as the ultimate Trojan Horse opportunity for full-scale socialization of our free-market system -- including the destruction of property rights, an inefficient command economy, and the subjugation of individual rights to the collective.

The fight must be taken to their doorstep now, before devastating, game-changing public policy can be implemented to tilt the playing field against free-market interests for the long-term.

State-level issues including natural resource development and oil & gas rule changes have proven WTP's approach resonates with the grassroots, but the present threat of federal Cap and Trade legislation is exactly the type of fight this organization was built for.

The high stakes for business, consumers and even the poor make Cap and Trade a perfect storm that WTP can ride to national prominence and electoral potency while the issue of massive "wilderness" designation, usurpation of water rights, etc. can help mobilize the grassroots.

A massive grassroots lobbying and membership campaign in 2009, followed by an issue-based election year campaign targeting on these issues in 2010 will establish WTP as the foremost single-issue organization when it comes to effectively opposing radical environmentalism.

Radical environmentalists have worked to establish their false premises in the national consciousness, with a significant degree of success. Moreover, today, it's "hip to be green."

However, public relations success is quite different from policy and electoral success as we have seen numerous times. Nearly all the mainstream media outlets are liberal, but that doesn't always translate into political success for liberal politicians.

The problem on the pro-business side -- especially when it comes to so-called "green" issues -- is we've never taken the radical environmentalists head-on.

That's why WTP is determined to retake the offensive on environmental issues, and create a large enough opening for political leaders to oppose schemes like Global Warming and Cap & Trade, or at least allow more timid politicians who lean toward rational, pro-business policy on these issues to be less inclined to kowtow to the radical "green" agenda.

In its first 24 months, this organization has made significant progress, including:

- Recognized exempt by IRS under section 501(c)4 [and the Institute as 501(c)3]
- Raised significant funds for issue lobbying, plus compensating Major Purpose funding
- Developed a coherent agenda and message, delivered via a cross-media approach
- Conducted a successful Candidate Survey program with electoral success in two states
- Built relationships with a stable of state-level elected officials willing to help
- Limited but significant success in grassroots legislative lobbying
- Initiated and won a Federal free speech Lawsuit when our lobbying rights were curtailed

Moving forward with our 2010 candidate survey program, WTP is prime for funding.

For decades, Montana has been a beachhead in enemy territory for radical environmentalists and has been slowly losing responsible development advocates in the legislature for the past few electoral cycles. This past year Western Tradition Partnership fought back, targeting legislative and key County races in two states -- with great success -- in a year where anti-development Democrats swept into office nationwide.

Our ambitious Candidate survey program -- the backbone of our election-year lobbying program -- was designed to mobilize the voters on candidates' positions on natural resource policy.

Surveys were first sent to candidates in targeted primaries, then in the General Election to introduce our agenda and find out which candidates sided with us on our responsible development agenda.

This information was combined with what is known internally as our "Watermelon Index", which examines voting patterns to identify who is "green on the outside and red in the inside".

In the final weeks of the election, letters and glossy postcards were sent to tens of thousands of likely voters and issue-ID lists in our targeted races where there was a clear difference on our issues. In total, we implemented our full survey program in the general election, and mobilized voters in 19 carefully selected legislative districts with information about how their candidates responded. A "No Global Warming Penalty" pledge was part of this effort.

The pro-development candidate prevailed in 14 of those 19 districts and arrested Governor Brian Schweitzer's plans to take total control of the 2009 Legislative resource agenda. With WTP's support on these issues, the pro-development GOP took the Senate majority by four seats, also taking one critical County Commissioner race where our aligned candidate prevailed.

Overall, a total of 28 Montana Senators- and Representatives-to-be rode to office in 100% support of WTP's responsible development agenda. That translated into 80% of our survey agenda solutions being drafted into proposed legislation in the 2009 session.

Following the election, Montana's former Speaker of the House and current Republican leader Scott Sales (R-Gallatin) said,

"...without [Western Tradition Partnership's] uncompromising issue-advocacy and hard-hitting tactics, the political environment in Montana would likely not be as favorable as it is now."

In Colorado, our main focus was in targeted County Commissioner races across the resource-rich Western Slope. This included hotly contested Garfield County, which as the epicenter of the 21 trillion cubic foot natural gas discovery, accounts for 40% of the drilling permits in the state. Garfield saw a horde of radical environmentalist third-party organizations align against the Republican incumbent and challenger for the two seats at play.

With absentee voting approaching nearly half of all ballots cast over recent cycles, WTP opted for a late-stage strategy, spending nearly \$70,000 primarily on targeted direct mail and phones -- with the bulk of spending on Garfield.

Both pro-development candidates in Garfield lost the absentee vote but overcame the deficit with polling place voters, vindicating WTP's intense poll-voter strategy. On Election Day, WTP-

aligned candidates prevailed in 7 of 9 targeted Colorado races. State legislative and Congressional candidates will follow.

Finally for Colorado, WTP engaged at the U.S. Senate level, lobbying Mark Udall over his opposition to U.S. domestic energy production, an unpopular position according to all available polling. While that issue did not win the day, it generated a number of postcards and constituent contacts which validated the organization's assessment and framing of the issue, and paved the way for similar efforts in the future at the highest levels of Federal office.

As we look ahead, it is critical we concentrate on advancing pro-resource development legislation, defeat attempts to socialize or control private and so-called public property (as with usurpation of development rights, or federalizing of water through H.R. 2421), and to kill Cap & Trade in whatever form it takes.

In 2010, WTP also intends to sponsor or co-sponsor a Ballot Initiative.

Western Tradition Partnership is set up to defend against the inevitable – and unpopular – natural resource power grabs by the Federal Government while broadening the scope of our program, all of which requires additional funding resources.

Our 2009 Grassroots growth program primarily consists of a three-prong approach:

1) Direct marketing

- a. Direct Mail – WTP has utilized direct mail to raise money, grow its list of identified supporters, and build the organization's reach – all while raising the profile of our issues among the grassroots. We have moved from issues in play during the state legislative season in MT and CO (which adjourn in April and May, respectively) to a national program primarily based upon opposition to Cap & Trade, but also regionally battling the several massive "wilderness" bills in Congress.
- b. Email and Web Marketing – WTP has developed a cutting-edge email and "Web 2.0" marketing program designed to drive prospects to signing up for our email lists via a single-issue purpose-built landing page with an E-Petition. Our conversion rates on state issues have been strong; the Cap and Trade E-Petition program has likewise been a success. Go to www.noca.org/tax or www.hydroisrenewable.com for an earlier example.
- c. Employee Grassroots Membership and "Paycheck Stuffer" Program – Please see memo enclosed herein. This program is modeled after systems developed by credit unions to engage and sign up employees in their own self-interest; WTP will engage with industries threatened by environmental policy (e.g., transportation, mining, oil & gas, etc.) as well as employees of other types of business whose management are willing to arrange for WTP to use employee meetings and/or "paycheck stuffers" to recruit grassroots membership.

2) Earned media and PR

- a. WTP plans to use an Earned Media strategy to help drive its message to the general public via radio and television talk show interviews, and public speaking/forum events. WTP's Jacob Leis recently made a national appearance on talk radio promoting our Cap & Trade opposition campaign and in driving traffic to our Cap & Trade website via dozens of radio affiliates. The organization also plans to grow its relationships with radio talk show hosts and other assets in the media, to publish op-eds, and to develop other earned media.
- 3) Building relationships with business and donor base
- a. Tour program – WTP has tested a Major Donor Acquisition Program: One-on-one meetings with high-propensity donors using a PowerPoint presentation. This program has proven successful on a limited basis (as far as dollars raised per meeting and conversion rate); provided we have the funding to continue to invest in this program, we expect a massive increase in new high dollar donors from our battle against Cap and Trade.
 - b. Public Relations program – WTP is scheduling presentations before groups of business executives, public policy organizations, and other influencers.

WTP is building regional and national membership through its broader direct mail and online fundraising programs. However, our efforts will be focused upon building membership in those specific states where we have identified and targeted politicians whose positions on Federal land grabs, Cap and Trade, and other relevant legislation, make them vulnerable to public pressure.

We estimate that a goal of building membership and issue-ID lists amounting to approximately 10% of likely voters in a given state or district is ideal for influencing candidates' positions and the greater electorate on these issues.

Western Tradition Partnership was built for such a time as this, and we have shown our ability to conceive, and execute a mission that is critical to building and/or regaining a conservative pro-business policy agenda. We occupy a unique position, being one of the only true conservative grassroots organizations niched entirely in the emerging environmental and natural resource issue mix.

We have tested and proven our Direct Mail and online membership, electoral lobbying, and legislative lobbying capabilities, on the state level. WTP is now a broad, self-sustaining organization with a growing grassroots base. We are building relationships by delivering valuable information and member benefits, while pursuing large-donor funding to grow through tackling broader major issues (e.g., Cap & Trade) on a regional and national scale.

The organization is therefore prime for funding at all levels, and we look forward to meeting with decision makers who are interested in advancing balanced policy solutions and making political progress at the state and federal level.

To Condit

Memorandum

To: WTP Staff

From: Christian Lefer, Director of Strategic Programming

Date: March 1, 2009, Most Recent Revision: April 5, 2009

Regarding: Meeting Scheduling Overview

Senator Brophy,

I appreciate your openness to look at this. This is a winning idea that needs the initial support of a handful of people who realize the opportunity presented to us. Western Tradition Partnership (WTP) needs to achieve a critical mass and break out of the typical cycle of inefficiency of early programs in order to be effective in 2010.

Please see our proposal below. This memo is intended for:

- a) those who already comprehend the basic elements and importance of targeted grassroots mobilization and effective media advocacy by groups like WTP – especially in battling radical environmentalists; and
- b) those who recognize the effectiveness of WTP's targeted strategy and ability to implement effective, results-oriented action.

As you can see in this memo, if we can meet with enough people and explain WTP's program to them, we will be able to raise the funding necessary to raise the immediate funds required to get our spokesmen on the road with new donor data, and WTP will be able to fund our proven programs long-term to combat and win the battles being waged by the radical environmentalists against job creation and business development across the West.

To enter the 2010 election season aggressively, we must raise \$260,000 by the end of the year.

If you would be willing to recommend us to a small group of people, this would go a very long way in making sure we achieve critical mass to grow at a rate to position WTP to make a major difference in 2010.

Should you have questions or want to discuss this proposal, please give me a call anytime.

Jacob Leis

Director of Communications
Western Tradition Partnership

Survey - Colored paper

HD57 Dan Kennedy

MASTER CANDIDATE FOLDER:

- ☒ Signature
- ☒ Letterhead
- ☐ Corner card (#10)
- ☐ #9

PRINTED:

BMX Letterhead Blue # 4000
 BMX Letterhead Red # 1200
 MG Letterhead Blue # 4000
 BMX Letterhead Red # 1200 window
 BMX #9 # 2000

Primary Mail Budget		Tier 1 Voters	2223		
	House Ct.	PerPiece	House \$	COPY TO CAND	COPY APPROVED
Intro Letter with Survey	917 1209	0.5	\$604.50		
Wife Letter	1099	0.65	\$714.35		
Issue-ID'd voters (R,T,L,G)	1075	0.45	\$483.75		
GUN	214				
LIFE	211				
TAX	217				
TAX/RTW	145				
Final	1209	0.45	\$544.05		
Totals	4592		\$2,346.65		

Absentee Chase	T1 Abs vtrs=	1109		T2 Abs. Vot=	864
	doing?	to whom?	House Ct.	PerPiece	House \$
Intro				0.5	\$-
Wife				0.65	\$-
Postcard				0.38	\$-
Total Abs:					\$-

TOTAL	\$2,346.65	Deposit:	\$1,173.33
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BMX 1900 Intro Letter - Done

MG 1700 Survey Done
 Wife letter 1+3 only (1150-1600 = 1090) p.5

Dan

(406) 259-5900 wk

628-1360

hm

cell

628-39-7117

4/27 LUM 4 sent e-mail

9/10 THAT2 ABS

5/25 PPV ready to stamp 584 pcs ✓ Sdlb

7/2 Issue letters 219 ✓ Sdlb

Denise Kennedy

Dear Friend -

My name is Denise Kennedy, and my husband Dan is running for the State Legislature in the June 8 Republican Primary.

As a busy mom, I know how difficult it is sometimes to feel like you have a good grasp on what your candidates running for office are about.

I also know how easy it is to feel sometimes like your voice and your vote don't matter.

But the good news is some people still get into politics for the right reasons -- not to "play" the games in Helena -- but to actually represent our values as Montanans.

And I know if elected, one of the good guys in Helena that we could always count on, would be my husband Dan.

Rather than just repeat some of the slick campaign talking points so popular nowadays among some politicians, I'd like to introduce you to the Daniel Kennedy I've been in love with for more than 20 years.

Our story began, believe it or not, at Dan's first business, a used furniture shop called D & S Used Furniture.

A girlfriend and I had been out looking for some things for the apartment we'd just moved into. By chance we walked into Dan's store.

As it turned out, Dan and my roommate had gone to the same High School and knew each other well.

From that first meeting on, the butterflies have never ceased.

Dan found out from my friend where I worked and paid me a visit there later that evening.

After that night, I knew we would end up together.

We've now been married 20 years, and Dan has moved onto bigger and better things in his career.

In fact, he's opened and grown five local companies since that time, and owns Ashley Furniture Homestore in Billings, a branch of the largest privately held furniture company in the world.

Today, we're blessed with two beautiful children - our 15 year old daughter, Bailey and our son Logan, who is 9.

As you know, life is never exactly a fairytale. Even the best relationships take work and faith.

But, that's exactly what Dan has been these last 20 years -- an incredibly hard worker, able provider, steadfast partner and man of faith.

As dedicated as he is to family, Dan's efforts have always extended beyond our household.

Like many good men in our state, my husband cares for his family and his community.

At our church, Dan volunteers with the Upward Basketball program and helps with various children's ministries.

In our 4-H club, Dan teaches archery while I help out with the Horse project.

Ever since I've known Dan, I can say he's always been concerned about future generations.

I'm sure that's one reason why Dan is strongly Pro-Life.

Also, as a business owner, Dan understands the pain high taxes and burdensome regulations can cause for families.

In fact, it bothers him that so many caring fathers and husbands are forced to spend more and more time away from their families -- just to keep up with the ever growing tax burden.

In deciding to run for the State Legislature, Dan understood the changes it would mean in our family.

But, like all decisions that affect our family, he came to me to talk about it.

Together, we decided -- especially because this election is so pivotal for our state & country -- running for state Representative was something he should go through with.

I know that with the support of our neighbors, Dan will be the guy that can change things for the better in Helena.

His values and convictions as a father, husband and Montanan make me sure of it.

Thanks for your time & God Bless.

Sincerely,
Debbie Kennedy

P.S. My husband, Dan Kennedy, is running for the Montana State House District 57.

As his loving wife of 20 years, I can tell you he's just the type of common sense, hard working, fiscally Conservative leader we need -- more desperately than ever in Helena.

Join our family in supporting Dan's efforts to change things for the better in Helena.

Please vote for Dan in the June 8 Republican Primary.

BEFORE THE COMMISSIONER
OF POLITICAL PRACTICES

Bonogofsky v. National Gun Owners Alliance No. COPP-2013-CFP-0008	Summary of Facts and Statement of Findings of Sufficient Evidence to Show a Violation of Title 13, Chapters 35 or 37
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Debra Bonogofsky of Billings was a candidate for the Montana House of Representatives, District 57 (HD57), in the 2010 primary. On June 21, 2010, Ms. Bonogofsky filed a complaint against the National Gun Owners Alliance (NGOA) claiming it made a HD57 election expense through the mailing of a letter. The complaint further claimed NGOA violated Montana law by failing to register, disclose and report the expense.

A copy of NGOA letter is attached to this Decision as Exhibit 1. The NGOA letter is hereafter referred to as "Letter."

I. INTRODUCTION

This Decision is a companion Decision to the simultaneously released Decision in the matter of *Bonogofsky v. Kennedy* COPP-2010-CFP-0015. Ms. Bonogofsky's complaint and this Decision raise and address issues related to independent expenditures. The *Kennedy* decision addresses issues related to coordination of expenditures.

An election expense such as the Letter addressed in this Decision falls into one of three types of election expense. The first type is that of a candidate election expense. A candidate election expense includes money spent in an election that is contributed to and expended by a candidate. Candidate election expenses are, of course, subject to contribution limits and must be attributed, disclosed and reported by the candidate. A candidate election expense includes a third party election expense coordinated with a candidate, as a coordinated expense is deemed to be an in-kind contribution to a candidate.

The companion *Kennedy* Decision determined that the Letter is an election expense. The *Kennedy* Decision further determined that the Letter did not involve a candidate expense, either direct or coordinated.

The *Kennedy* decision means the Letter is one of the remaining two types of election expense; that is, it is either an independent expenditure or an issue advocacy expenditure. An independent expenditure is that of a third party entity independent of a candidate, but focused on a candidate in the election. Any "independent expenditure" must be disclosed, reported, and attributed, albeit by the third party rather than the candidate. An independent expenditure, however, is not attributed as a contribution to a candidate and therefore it is not subject to contribution limits or to reporting by a candidate.

The third type of election expense is that made coincident to the election by a third party entity independent of a candidate, but with the use of the money focused on an issue and not on a candidate. This election expense is

called issue advocacy. This “issue advocacy” expense is not considered to be a candidate related expense and therefore is not subject to campaign practice requirements. Specifically, Montana law does not require that an issue advocacy expense be attributed, reported or disclosed.¹

II. SUBSTANTIVE ISSUES ADDRESSED

The substantive areas of campaign finance law addressed by this decision are: 1) Independent Expenditures; 2) Issue Advocacy; 3) Express Advocacy; and 4) Attribution, reporting and disclosure of independent expenditures.

III. FINDING OF FACTS

The following are the foundational relevant facts for a Decision in this Matter:

Finding of Fact No. 1: Ms. Bonogofsky was a 2010 Candidate for the Republican Party nomination from House District 57, Billings, Montana. Another Republican, Dan Kennedy, also sought the 2010 nomination by the Republican Party from House District 57. (Secretary of State (SOS) Website).

Finding of Fact No. 2: The primary vote in Montana took place on Tuesday, June 8, 2010. (SOS website).

Finding of Fact No. 3: Six days before the election, the National Gun Owner's Alliance mailed a letter dated June 1, 2010 and postmarked on Wednesday, June 2, 2010 in Richmond, Virginia to a list of Montanans identified as “HD 57”. The letter was accompanied by the results of a survey. (Commissioner's Records). See the Letter, Exhibit 1.

Finding of Fact No. 4: The National Gun Owner's Alliance is a non-profit corporation based in the state of Virginia. (Commissioner's Records).

The Commissioner has examined the circumstances of the Letter in the

¹ The 2012 Montana Legislative session considered several bills that would have required reporting and disclosure of any election expense, including issue advocacy, made within 60 days of the date of an election. None of these bills passed into law. A 2014 ballot initiative has been proposed to address this issue.

companion *Kennedy* Decision. Based on the analysis and facts in the *Kennedy* Decision as well as the language of the Letter the Commissioner makes the following finding of fact.

Finding of Fact No. 5: The Letter is the third document sent by the National Gun Owner's Alliance to 2010 HD 57 voters. The first document was a letter with an accompanying survey form. The second document was a letter, with wording similar to the Letter, introducing the survey results. The third document was the Letter, also introducing survey results.

IV. DISCUSSION

The Commissioner determined that the Letter had value and was not coordinated. See companion matter of *Bongofsky v. Kennedy* No. COPP-2010-CFP-0015.² Please see the companion *Kennedy* Decision for a full discussion of these issues. The *Kennedy* Decision is incorporated by reference as though set out in full.

The central issue in this matter is therefore whether or not the Letter is an expenditure affecting the election of a candidate. Stated in contrast, the issue is whether or not the Letter is an expenditure made during an election but servicing discussion of an issue. The Letter is one or the other; either candidate related or issue related. If the Letter is candidate related then it is an independent expenditure that must be attributed, reported and disclosed. If the Letter is an issue advocacy expense and it need not be attributed, reported and disclosed.

A. Neither Issue Advocacy or Independent Expenditures May Be Limited

An issue advocacy and/or an independent expenditure made by a

² The *Bonogofsky v. Kennedy* Decision is released simultaneous with this Decision.

corporate entity may be made in any amount in any Montana election, including the 2010 HD 57 election. This notation is necessary because Montana law has historically banned candidate election expenditures, including independent expenditures, by a group operating as a corporation, such as National Gun Owner's Alliance. See §13-35-227 MCA and see also the history of this law set out in *Western Tradition Partnership, Inc. v. State of Montana*, 2011 MT 328, 363 Mont. 220, 271 P. 3d 1.

At the time the Letter was mailed the prohibition of corporate independent expenditure in candidate races established by §13-35-227 MCA was still in place. The US Supreme Court decided *Citizens United v. F.E.C.*, 130 S. Ct 876, 175 LO. Ed. 2d 753 in 2010. Section 13-35-227 MCA, however, remained in place until 2012 when *Citizens United* was applied to strike down the part of §13-35-227 MCA providing limitation of such independent expenditures. See *American Tradition Partnership v. Bullock*, 132 S. Ct. 1307, 181 L. Ed. 2d 1036 (2012).³ The Commissioner applies the *American Tradition Partnership v. Bullock* decision retroactively to the 2010 HD 57 election. See *Graybill v. WTP*, COPP-2010-CFP-0016.

B. An Independent Campaign Expenditure is Public Information

The NGOA may, under Montana law (see above), make an independent expenditure of any amount in a Montana election. However, any independent expenditure (as contrasted to an issues advocacy expenditure), must be attributed, disclosed and reported as an election expense. Montana law

³ The portion of §13-35-227 MCA prohibiting contributions by corporations to candidates was not stricken and remains in force in Montana elections, including the 2010 HD 57 election.

mandates an entity must file as an independent committee ("shall file") and report its independent election expenditures (§13-37-226(5) MCA). Montana law further requires attribution on the communication funded by the expense ("must clearly and conspicuously include the attribution 'paid for by'...") (§13-35-225(1) MCA). Further, Montana law requires certain disclosures ("must disclose") as to contributions to (§13-37-2229 MCA) and the cost of the communication (§13-37-230 MCA).

i. The Letter as an Independent or Issue Advocacy Expenditure

There has been considerable past analysis by this Office as to whether an expenditure made during the time of an election is an issue advocacy or an independent expenditure. To date the Commissioner's analysis on this issue has been subjected to only one judicial review, that being by a state district court in *Western Tradition Partnership v. Gallik*, 1st Judicial District, Lewis and Clark County, No. BDV-2010-1120, 2011 Mont. Dist. LEXIS 83.

Sixteen years ago this Office, through Commissioner Argenbright, first discussed the differing constitutional standards measuring campaign practices law applicable to expenditures of candidates versus expenditures of independent committees. See *Harmon v. Citizens for Common Sense Government* decided December 31, 1997. This issue has been revisited by succeeding Commissioners as applied to decisions including: *Michels v. Nelson* decided July 31, 2001 (Commissioner Vaughey); *Little v. Progressive Missoula and Handler* decided July 22, 2004 (Commissioner Vaughey); *Close v. People for Responsible Government* decided December 12, 2005 (Commissioner

Higgins); *Keane v. Montanans for True Democrat* decided April 2, 2008 (Commissioner Unsworth); *Erickson v. PRIDE, Inc.* decided July 22, 2008 (Commissioner Unsworth); *Roberts v. Griffin* decided November 19, 2009 (Commissioner Unsworth); *Graybill v. Western Tradition Partnership*, COPP-2010-CFP-0016 (Commissioner Unsworth); and, *Wittich v. Main Street Advocacy Fund*, COPP-2010-CFP-0018 (Deputy Commissioner Dufrechou).

The Commissioner, consistent with the above precedent, measures the Letter as an independent expenditure if it is a "...communication[s] expressly advocating the success or defeat of a candidate or ballot issue...", ARM 44.10.323(3), emphasis added.⁴ It is noted that the last Decisions issued by a Commissioner involving the independent expenditure issue were those of Commissioner Unsworth in the *Matter of Graybill* and Deputy Commissioner Dufrechou in *Main Street Advocacy Fund*. Both Decisions were made in the midst of, or shortly after, the litigation concerning §13-35-227 MCA. Still, *Graybill* and *Main Street Advocacy Fund* analyzed and applied the express advocacy standard of ARM 44.10.323(3) without consideration of the lesser "anything of value" standard of §13-1-101(11)(a) MCA that the district court discussed in *WTP v. Gallik*, 1st Judicial District, Lewis and Clark County No. BDV-2010-1120, 2011 Mont. Dist. Lexis 83, ¶17. This Commissioner

⁴ Montana's prohibition of corporate independent expenditures originated as a statute passed in initiative in 1912. See annotations §13-35-227 MCA. The "expressly advocating" language of the current ARM 44.10.323(3) was added through administrative rule hearings adopted and approved by Commissioners on January 20, 1986 and September 27, 1999. The Notice of Adoption for each such rule change described the addition of the express advocacy words as being necessary to adjust to the "state of law" brought about by litigation.

continues to measure an independent expenditure under the express advocacy standard of ARM 44.10.323(3).

1. The Letter as Express Advocacy

The “express advocacy” phrase incorporated into Montana law through ARM 44.10.323(3) originated from a 1976 decision of the US Supreme Court (*Buckley v. Valeo*, 424 U.S. 1 (1976)). The phrase was intended as a measure of the allowed breadth of governmental regulation of political speech.

The *Buckley* Court narrowly construed the federal statutory definition of “expenditure” to apply, for certain purposes, “only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office.” *Buckley* at 44, emphasis added. The *Buckley* Court recognized that general discussions of issues and candidates are distinguishable from more pointed exhortations to vote for or against particular persons. In a footnote the Court listed examples, which have become known as the “magic words” of express advocacy, including phrases such as “vote for,” “elect,” “support,” “cast your ballot for,” “vote against,” “defeat,” “reject,” etc. *Buckley* at 44, n. 52.

As measured by the “magic words” standard of *Buckley*, the Letter is not express advocacy. While the Letter is certainly more than a general discussion of issues and candidates, it does not use any “magic words”. The *Buckley* magic words standard, however, has been subjected to 37 years of jurisprudence and it has since been refined by Court decisions, administrative action and legislative acts. Express advocacy, while still subject to rigorous

analysis, is no longer measured by magic words but by whether the communication is the “functional equivalent of express advocacy”. The Commissioner has defined the “functional equivalent of express advocacy” express advocacy legal standard in detail in the *Graybill*, COPP-2010-CFP-16. The reader is directed to *Graybill* for a further discussion.

Under the “functional equivalent of express advocacy” test an analysis is made as to whether or not the communication (and therefore the expenditure) is express advocacy based on the content of the communication. The Letter at issue in this Matter is a two page, legal size document. The content of the Letter is reviewed as follows: “a court should find that an ad [letter] is the functional equivalent of express advocacy only if the ad [letter] is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” *Federal Election Comm’n v. Wisconsin Right to Life*, 551 U.S. 449, 469-70 (2007) (“*WRTL*”).

Chief Justice Roberts, writing for the majority, applied the test to *WRTL*’s ads as follows:

Under this test, *WRTL*’s three ads are plainly not the functional equivalent of express advocacy. First, their content is consistent with that of a genuine issue ad: the ads focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter. Second, their content lacks indicia of express advocacy: the ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate’s character, qualifications, or fitness for office.

WRTL at 470.

The Letter is examined for content with the above guidance as to functional equivalency of express advocacy.

a. Examination of Content of Letter for Issue Advocacy

Roberts first directs that the Letter be examined for the issue content consistent “with that of a genuine issue ad”. We hereby apply the “focus”, “position”, “exhort” and “contact” considerations set out by Roberts in regard to issue determination.

Finding of Fact No. 6: The Letter takes a position on an issue (gun control) and therefore meets this standard of issue advocacy. However, the Letter does not focus on the legislative issue as opposed to the candidate or election. The first substantive sentence of the Letter reads: “[i]n a short time, voters will be going to the polls to select their State Legislators among other elected officials”. As further discussed below, the Letter is replete with references to candidates and election.

Finding of Fact No. 7: The Letter cannot reasonably be interpreted as an exhortation to the public. Unlike a general ad directed to the public, the letter was mailed to a very select group of people (Republican Party primary voters in a single legislative district in Montana) no more than 4 days prior to a primary election vote. Even the contact urged was election centered as it was focused on a candidate survey of the two candidates in the Republican primary election in Montana’s HD 57.

In addition to reading the Letter for issue advocacy content, the Commissioner may place the content in the context of use by a limited examination of background information. This is allowed because while “contextual factors...should seldom play a significant role in the inquiry,” courts “need not ignore basic background information that may be necessary to put an ad in context”, *WRTL* at 473-74.

Finding of Fact No. 8: The Letter was not addressed to the general public but only to Republican Party voters in HD 57. The envelope containing the letter and survey has a printed identification line for “HD 57”. The survey results accompanying the Letter is limited to HD 57. See, the Letter.

Finding of Fact No. 9: The Letter was mailed from Richmond, Virginia on Wednesday June 2, 2010 (see envelope, Exhibit 1). This meant it arrived in Montana no earlier than Friday June 4, 2010.

Finding of Fact No. 10: The *Kennedy* Decision determined that there were comparably timed and written letters mailed by Western Tradition Partnership, Montana Citizens for Right to Work, and Assembly Action Fund.

With this background information added to the content of the letter there is no reasonable interpretation that could find the Letter is consistent with a genuine issue ad. The Commissioner determines that Letter focused on a relatively small group of voters, those being Republican primary voters in one legislative district in one of the most sparsely populated states in the nation. Timing is recognized as important with an issue focus involving “a legislative issue that is either currently the subject of legislative scrutiny or likely to be the subject of scrutiny in the near future.” *WRTL*, 466 F. Supp. 2d 195, 207. The Commissioner determines that the Letter was timed around and tied to the primary voting date with its focus being on a specific candidate’s survey response. The Commissioner finds that there is no reasonable interpretation that could find a focus on an issue (thereby becoming issue advocacy) as opposed to a focus on a candidate (thereby becoming express advocacy).

b. Examination of Content of Letter for Indicia of Express Advocacy

Roberts secondly directs that the Letter be examined for “indicia of express advocacy”. Roberts lists those as “election, candidacy, political party or challenger” as well as “position on a candidate’s character, qualifications, or fitness for office”. We hereby apply the considerations set out by Roberts.

It is not necessary to separately address each of the Roberts' considerations because the Commissioner determines that the Letter includes each and every one of the indicia, most multiple times. See Ex. 1. Specifically, the Letter mentions the election three times ("your vote" and "June 8 primary election" twice), candidacy nine times, political party (Republican) five times, mentions Bonogofsky (always negatively) 5 times, mentions Dan Kennedy (always positively) 3 times, and takes a position on candidate qualifications (Kennedy has "leadership" while Bonogofsky is "stonewalling").

Applying the background information set out above the Commissioner determines that the Letter was mailed to a very select group of people (Republican Party primary voters in a single legislative district in Montana) no more than 4 days prior to a primary vote. Further, the Commissioner determines that the Letter meets each Roberts indicia of express advocacy. This Commissioner finds that there is no reasonable determination as to the Letter other than that it is express advocacy.

2. Other Factors Including *Graybill* Complaint

In examining content of the Letter this Commissioner took into consideration the accompanying survey results summary. The survey results does not change the above analysis regarding the Letter since the survey also lists the candidates for HD 57 and the primary election date of June 8, 2010. The Commissioner also took into consideration the envelope containing the Letter and survey (see Exhibit 1); specifically, the postmark date and the HD 57 notation set out on the envelope as part of the background information.

This Commissioner also took into consideration the decision of Commissioner Unsworth in *Graybill v. WTP*, COPP-2010-CFP-0016. In *Graybill* the Commissioner determined express advocacy also based on an election expense for the cost of a document attacking the opposing candidate. The flyers in *Graybill*, as the Letter in this Matter, did not instruct a “yes” or “no” vote for the candidate. The *Graybill* flyers did not contain the issue directed “please contact” exhortation, as did the Letter in this Matter. However, the Letter contained many more references to elections, candidates and even the time/date of election than did the *Graybill* flyers. The Letter, as measured by content, meets the express advocacy standard set by *Graybill*.

V. FINDINGS ESTABLISHING CAMPAIGN PRACTICE VIOLATIONS

The Commissioner has determined that the NGOA prepared and mailed at least three sets of documents concerning the 2010 HD 57 election including the Letter. The Commissioner has further found or determined that the production and mailing of the Letter constitutes value and is therefore an election expense. Finally, the Commissioner determined that the Letter constitutes an express advocacy election expense.

Montana law mandates an entity such as the NGOA must file with the commissioner as an independent political committee (“shall file”) upon making an independent election expenditure. §13-37-226(5) MCA. Montana law further requires attribution on the communication (“must clearly and conspicuously include the attribution ‘paid for by’...”, §13-35-225(1) MCA).

Finally, a political committee, having filed, “must disclose” as to contributions (§13-37-229 MCA) and the amount of expenditure (§13-37-230 MCA).

In accord with the above findings the Commissioner determines that sufficient evidence exists to show that the NGOA failed to register as a political committee and failed to report and disclose election contributions and expenses as required by Montana’s campaign practices law. To be specific, sufficient evidence exists to show that the NGOA failed to file as a political committee and failed to report and disclose election contributions and expenses related to the Letter use in the 2010 HD 57 Republican Party primary race, as required by Montana’s Campaign Practices law.

The Commissioner also considered whether the findings create a constitutionally impermissible burden on NGOA. The US Supreme Court, in *Citizens United*, determined that independent campaign expenditures, including those of a corporation, are protected election speech and cannot be limited or prohibited in amount. Disclosure and reporting of independent expenditures, however, do not limit such speech but instead keep elections fairer by informing the opposing candidate and the public as to who is making an election expenditure.

Consistent with the above reasoning, Montana courts have ruled that the filing and reporting requirements imposed by Montana law on incidental committees are constitutionally permissible as they do not create such a heavy burden that they interfere with the 1st Amendment political speech rights of the speaker. *National Association for Gun Rights, Inc. v. James Murry, et. al.*, CV-

VI. ADJUDICATION

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner cannot avoid, but must make, a decision as the law mandates that the Commissioner (“shall investigate,” *see*, §13-37-111(2)(a) MCA) investigate any alleged violation of campaign practices law . The mandate to investigate is followed by a mandate to take action as the law requires that if there is “sufficient evidence” of a violation the Commissioner must (“shall notify”, *see* §13-37-124 MCA) initiate consideration for adjudication.

Second, having been charged to make a decision, the Commissioner must follow substantive law applicable to a particular campaign practice decision. In this Matter an independent election expenditure applies to all “...communications expressly advocating the success or defeat of a candidate or ballot issue...” ARM 44.10.323(3), emphasis added. The Commissioner has found that the Letter and survey attached as Exhibit 1 constitute express advocacy, *id.* The Letter, as a corporate independent expenditure, must be attributed, and contributions/expenditures disclosed and reported. The NGOA must file as independent committee to report and disclose §13-37-226(5) MCA.

This Commissioner, having been charged to investigate and decide, hereby determines that sufficient evidence exists to show that the NGOA violated Montana’s campaign practice laws, including but not limited to §§13-37-201, 225, 226, 229 and 230, MCA. Having determined that there is

sufficient evidence to show a campaign practice violation has occurred, the next step is to determine whether there are circumstances or explanations that may affect adjudication of the violation and/or the amount of the fine.

The NGOA's decision to act through a letter that was not properly reported or disclosed was by choice and deliberate. Excusable neglect cannot be applied to the failures of the NGOA in this Matter. See discussion of excusable neglect principles in *Matters of Vincent*, Nos. CPP-2013-CFP-0007 and 0011. The NGOA chose to make the expense and also chose to avoid reporting and disclosure requirements of Montana law. Montana has determined that political discourse is more fairly advanced when, through disclosure, the public is informed as to the identify of those who seek to influence elections. There can be no excuse, but only punishment, when an avoidance of reporting and disclosing occur, such as are involved in this matter.

Likewise, the amounts of money are too significant to be excused as *de minimis*. See discussion of *de minimis* principles in *Matters of Vincent* Nos. CPP-2013-CFP-0007 and 0011. With the above analysis in mind, this Matter is also not appropriate for application of the *de minimis* theory.

Because there is a sufficiency finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable, civil adjudication and/or a civil fine is justified (see §13-37-124 MCA). This Commissioner hereby, through this decision, issues a "sufficient evidence" Finding and Decision justifying civil adjudication under §13-37-124 MCA.

This matter will now be submitted to (or “noticed to”) the Lewis and Clark County attorney for his review for appropriate civil action. See §13-37-124(1) MCA.⁵ Should the County Attorney waive the right to adjudicate (§13-37-124(2) MCA) or fail to prosecute within 30 days (§13-37-124(1) MCA) this Matter returns to this Commissioner for possible adjudication. *Id.*

Most of the Matters decided by a Commissioner and referred to the County Attorney are waived back to the Commissioner for his further consideration. Assuming that this Matter is waived back, the Finding and Decision in this Matter does not necessarily lead to civil adjudication as the Commissioner has discretion (“may then initiate” see §13-37-124(1) MCA) in regard to a legal action. Instead, most of the Matters decided by a Commissioner are resolved by payment of a negotiated fine. In the event that a fine is not negotiated and the Matter resolved, the Commissioner retains statutory authority to bring a complaint in district court against any person who intentionally or negligently violates any requirement of Chapter 37, including those of §13-37-226. (See 13-37-128 MCA). Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

At the point this Matter is returned for negotiation of the fine or for litigation mitigation will be considered. It is hereby determined that case specific mitigation, stemming from the facts of this Matter, is not appropriate


⁵ Notification is to “...the county attorney in which the alleged violation occurred...” §13-37-124(1) MCA. Any failure to attribute occurred in Yellowstone County and the failure to report occurred in Lewis and Clark County. This Commissioner chooses to Notice this matter to the county attorney in Lewis and Clark County.

and will be not be a factor in negotiations. See discussion of mitigation principles in *Matters of Vincent*, Nos. CPP-2013-CFP-0007 and 0011.

VII. CONCLUSION

Based on the preceding discussion as Commissioner, I find and decide that there is sufficient evidence to show that the National Gun Owners Alliance violated Montana's campaign practices laws, as set out above, and that a civil penalty action is warranted. This matter is hereby submitted to [or "noticed to"] the Lewis and Clark County Attorney for his review for appropriate civil action.

Dated this 16th day of October, 2013.



Jonathan R. Motl
Commissioner of Political Practices
Of the State of Montana
P.O. Box 202401
1205 8th Avenue
Helena, MT 59620
Phone: (406) 444-4622



National Gun Owners Alliance

Box 2268
Merrifield, VA 22116

URGENT!

RICHMOND VA 232

02 JUN 2010 PM 2 L



Mr. John Gonitzke
4313 Duck Creek Road
Billings, MT 59101-6188

8809541819 HD57

5310136188





National Gun Owners Alliance

June 1, 2010

Dear Friend,

There's not a moment to waste.

In a short time, voters will be going to the polls to select their State Legislators among other elected officials.

You and I must act quickly to make sure our candidates pledge to support our constitutional right to keep and bear arms before the June 8 Primary Election.

At the state level, I wrote you earlier with the first results. Now, after delivering surveys to your candidates for State House District 57, the deadline has long passed, and the final candidate responses are in.

The good news is, Republican Dan Kennedy responded 100% in favor of your gun rights on the Gun Rights Candidate Survey.

Dan Kennedy publicly committed to oppose firearms registration, bans on semi-automatic weapons and new taxes on firearms and ammunition. Better still, he also signed the National Gun Owners Alliance Leadership pledge, promising to assume a leadership role for legislation to further protect our right to keep and bear arms.

The bad news is that the other Republican candidate in the June 8 Republican Primary Election, Republican Debra Bonogofsky, has still not responded to the Gun Rights Candidate Survey.

Frankly, her failure to respond is of great concern.

There is absolutely no reason for a candidate to be silent on the gun grabbers' anti-gun schemes, unless perhaps he or she plans to someday vote for some sort of additional gun control measures.

This is why I'm so concerned that Debra Bonogofsky continues to refuse to answer the Gun Rights Candidate Survey. She simply will not pledge to fight against the registration of firearms in Montana.

The overwhelming evidence is that the "Brady Bill's" registration of firearms purchases has done nothing to fight crime. But it does make it easy for bureaucrats to confiscate guns from private hands as soon as they have the political muscle to do so.

It is vital that you give Debra Bonogofsky an earful and demand that she solidly commit to support your gun rights NOW, while she is looking for your vote.

There is no reason to surrender to arm-twisting by gun grabbers. Quite simply, criminals do not submit to waiting periods and background checks.

However, these bureaucratic hurdles do make it more difficult for law-abiding citizens to buy a gun.

Worse yet, since they're so difficult to enforce, they create a complicated and expensive gun control bureaucracy. Thus, waiting periods serve the gun grabbers' real agenda -- laying the groundwork for registration and confiscation of all weapons.

You now have a chance to make an important difference.

Right now -- while the politicians want our support -- is the best time to let the candidates know that we will not tolerate any more erosion of our rights.

The stakes are high. There's not much time to act.

Here's how you can help.

Thank Dan Kennedy for his 100% public support of the Second Amendment and for his leadership pledge on this important issue.

Also, turn up the heat on Republican Debra Bonogofsky. Insist she stop stonewalling the Gun Rights Candidate Survey and instead come out strongly for our right to keep and bear arms.

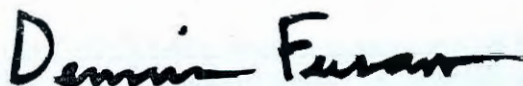
Finally, I hope you will inform me of what you've done.

By returning the enclosed Action Reply Memo, I can prove to the politicians that gun owners are informed and will not stand for any candidate who promotes failed gun control schemes on the citizens of Montana.

I hope you will also enclose a contribution to the National Gun Owners Alliance. If we all pitch in, there's no way the politicians can ignore us.

Thanks for your prompt action!

Sincerely,



Dennis Fusaro
Executive Director

P.S. Your action will send a clear signal that gun owners will not roll over when the gun grabbers, bureaucrats and big media come after us.

Please let Republican Dan Kennedy know you appreciate his principled pro-gun platform and leadership pledge.

And don't let Republican Debra Bonogofsky get away with her continued silence on the Gun Rights Candidate Survey. Be sure to tell her you demand 100% public support for your Second Amendment rights from ALL of your candidates before the June 8 Primary Election.

National Gun Owners Alliance

Roster of Responses to the Montana 2010 Candidate Survey

Primary Election – June 8, 2010

1. Should state law prohibit Montana localities from placing limitations on the rights of citizens to purchase or carry firearms?
2. Would you support efforts to strengthen Montana's Firearms Freedom Act to make it a felony for federal agents to serve warrants in Montana in violation of this new law?
3. Would you oppose legislation mandating a waiting period before the purchase of a firearm?
4. Would you oppose legislation that would require that firearms purchased by private citizens be registered with law enforcement and tracked by a centralized record system administered by government agencies?
5. Do you oppose legislation banning the manufacture, sale or possession of semi-automatic firearms?
6. Do you oppose laws that would require that the police give permission prior to a person buying a firearm?
7. Do you oppose laws which would impose any punitive taxes on the ownership, purchase or use of firearms or ammunition currently available to law-abiding citizens?
8. Do you oppose government licensing to buy a gun?
9. Would you support Vermont-style legislation which would eliminate all requirements to pay fees and register weapons and simply allow law-abiding citizens to carry firearms for any reason except for the commission of a crime?

Candidate Survey Responses House District 57

	#1	#2	#3	#4	#5	#6	#7	#8	#9
Debra Bonogofsky (Rep)	--	--	--	--	--	--	--	--	--
Dan Kennedy (Rep)	Y	Y	Y	Y	Y	Y	Y	Y	Y

Montana 2010 Gun Rights Candidate Survey
Action Reply Memo
June 8 Primary Election
House District 57

To: Dennis Fusaro
National Gun Owners Alliance
Box 2268
Merrifield, VA 22116

Dear Dennis:

The continuing threat the gun grabbers pose to the Second Amendment is too great to sit by idly. As a Montana citizen, I want to send a strong pro-gun statement to the politicians.
Therefore, I will:

___ Express my thanks to Republican Dan Kennedy for his clear, principled and total support of the right to keep and bear arms.

___ Insist that Republican Debra Bonogofsky answer the Gun Rights Candidate Survey and pledge support for the right to keep and bear arms.

___ Enclose a contribution to help mobilize more gun rights activists.*

☐ \$75

☐ \$50

☐ \$25

☐ \$15

☐ Other \$ _____

Name

Address

City

State

Zip

*Note: Make checks payable to National Gun Owners Alliance.

BECAUSE THE NATIONAL GUN OWNERS ALLIANCE FIGHTS AGAINST ANTI-GUN LEGISLATION AT THE STATE AND FEDERAL LEVELS, YOUR DONATION IS NOT DEDUCTIBLE AS A CHARITABLE CONTRIBUTION.

[mailcode]



National Gun Owners Alliance

June 1, 2010

Dear Friend,

There's not a moment to waste.

In a short time, voters will be going to the polls to select their State Legislators among other elected officials.

You and I must act quickly to make sure our candidates pledge to support our constitutional right to keep and bear arms before the June 8 Primary Election.

At the state level, I wrote you earlier with the first results. Now, after delivering surveys to your candidates for State House District 57, the deadline has long passed, and the final candidate responses are in.

The good news is, Republican Dan Kennedy responded 100% in favor of your gun rights on the Gun Rights Candidate Survey.

Dan Kennedy publicly committed to oppose firearms registration, bans on semi-automatic weapons and new taxes on firearms and ammunition. Better still, he also signed the National Gun Owners Alliance Leadership pledge, promising to assume a leadership role for legislation to further protect our right to keep and bear arms.

The bad news is that the other Republican candidate in the June 8 Republican Primary Election, Republican Debra Bonogofsky, has still not responded to the Gun Rights Candidate Survey.

Frankly, her failure to respond is of great concern.

There is absolutely no reason for a candidate to be silent on the gun grabbers' anti-gun schemes, unless perhaps he or she plans to someday vote for some sort of additional gun control measures.

This is why I'm so concerned that Debra Bonogofsky continues to refuse to answer the Gun Rights Candidate Survey. She simply will not pledge to fight against the registration of firearms in Montana.

The overwhelming evidence is that the "Brady Bill's" registration of firearms purchases has done nothing to fight crime. But it does make it easy for bureaucrats to confiscate guns from private hands as soon as they have the political muscle to do so.

It is vital that you give Debra Bonogofsky an earful and demand that she solidly commit to support your gun rights NOW, while she is looking for your vote.

There is no reason to surrender to arm-twisting by gun grabbers. Quite simply, criminals do not submit to waiting periods and background checks.

However, these bureaucratic hurdles do make it more difficult for law-abiding citizens to buy a gun.

Worse yet, since they're so difficult to enforce, they create a complicated and expensive gun control bureaucracy. Thus, waiting periods serve the gun grabbers' real agenda -- laying the groundwork for registration and confiscation of all weapons.

You now have a chance to make an important difference.

Right now -- while the politicians want our support -- is the best time to let the candidates know that we will not tolerate any more erosion of our rights.

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Here's how you can help.

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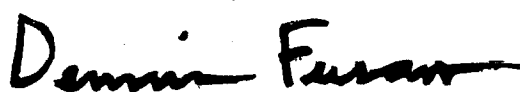
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Dennis Fusaro
Executive Director

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Please let Republican Dan Kennedy know you appreciate his principled pro-gun platform and leadership pledge.

And don't let Republican Debra Bonogofsky get away with her continued silence on the Gun Rights Candidate Survey. Be sure to tell her you demand 100% public support for your Second Amendment rights from ALL of your candidates before the June 8 Primary Election.

**CURRENT PROCEDURES
FOR
CAMPAIGN FINANCE REPORTING**

**** CANDIDATES ****

STATEMENT OF CANDIDATE:

The Statement of Candidate (form C-1 for statewide and state district candidates and form C-1-A for county, municipal and school candidates) is required for all candidates, including write-in candidates. The only exception is for specific school districts and certain special districts – conservation, fire, hospital, irrigation, sewer, transportation or water districts.

Where Statements are Provided and When They are to be Filed:

Statewide and state district candidates must file a Statement of Candidate (form C-1, provided by the Commissioner's office).

County, municipal, and school candidates must file a Statement of Candidate (form C-1-A, provided by their county election administrator or the Commissioner's office) with the Commissioner and also with their county election administrator.

Those school candidates who are required to file (those in 1st class districts) must file a Statement of Candidate (form C-1-A, provided by their school district clerk or the Commissioner's office) with the Commissioner and also with their school district clerk, who serves as their election administrator.

When Statements are to be Filed:

A candidate must file a Statement of Candidate immediately after receiving or spending money, or after appointing a campaign treasurer, or five days after filing for office, **whichever occurs first.**

Material Provided to Candidates:

Statewide and state district candidates are directed to download the following material when the candidate officially files with the Secretary of State:

1. Statement of Candidate (form C-1)
2. Business Disclosure Statement (form D-1)

County, municipal and school candidates are directed to download the following material when the candidate officially files with the appropriate county election administrator or school official:

1. Statement of Candidate (form C-1-A)

Forms C-1-A are provided either by the appropriate county election administrator or, in some cases, by the Commissioner's office.

When a properly completed Statement of Candidate is received, a letter acknowledging its receipt is emailed or mailed to the candidates. The letter is generated after entering the C-1 or C-1-A information into the database and is signed by the staff member responsible for the particular type of candidate.

To ensure that all candidates are made aware of and have access to the Code of Fair Campaign Practices, the form C-3 is provided only by the Commissioner's office. The Commissioner emails or mails a letter to each candidate shortly after the Statement of Candidate is received. The letter explains the Code and provides copies of the form C-3 to be completed and returned if the candidate wishes. The code is voluntary, if a candidate chooses to subscribe to the code, one copy is filed with the Commissioner's office and one copy is retained by the candidate.

Material Sent to Treasurers of Candidates:

The Statement of Candidate provides the name and address of the campaign treasurer. An informational memo (with a copy to the candidate) and a list of suggested materials are emailed or mailed to each treasurer of a candidate when the Statement of Candidate has been filed and approved.

If the candidate is required to file financial reports, the informational memo will suggest the following materials to be downloaded from the Commissioner's website:

1. Contribution Limits Summary
2. Disclaimer brochure
3. Accounting and Reporting Manual for Candidates and Treasurers (Green Book)
4. A calendar of report due dates
5. Information on electronic filing of campaign reports

(Statewide candidates may receive additional informational memos.)

CAMPAIGN FINANCE REPORTS:

All statewide and state district candidates are required to file campaign finance reports (form C-5). County, municipal and school candidates who anticipate receiving or spending \$500 or more are also required to file campaign finance reports (form C-5). County, municipal and school candidates who anticipate receiving or spending less than

\$500 during the election cycle are not required to file campaign finance reports. (This information is indicated on form C-1-A by checking box A, B or C.)

Reports are due on a filing schedule set out in statute. The schedule varies depending on the office sought. Treasurers are provided with a detailed calendar of reporting dates. Reports are due by 5:00 PM on the due date. Postmarked by the due date does not constitute timely filing; a postmark must indicate that the report was mailed three business days prior to the due date to be considered timely.

Statewide candidates are required to file their reports electronically using Campaign Tracker. State District, County, School and City candidates reports may be filed by fax or email to meet a reporting deadline.

Treasurers of all candidates, **even if they are not required to file campaign finance reports**, must keep records of campaign financial activity as specified in the accounting and reporting manual. **Accounts kept by a campaign treasurer of a candidate must be preserved by the treasurer for a period coinciding with the term of office for which the person was a candidate or for a period of 4 years, whichever is longer.**

Office Procedures to Review Reports:

According to campaign finance law, section 13-37-121(1), MCA, **"each statement and report filed with the commissioner during an election or within 60 days thereafter shall be inspected within 20 days after it is filed."**

All reports are reviewed by the Commissioner's staff. Any errors or omissions result in contacting the treasurer of the candidate by letter, email or telephone for additional information, clarification or corrections. Minor corrections on the filed report may be made by the Commissioner's staff (with agreement of the treasurer). Most correction are made by the treasurer filing corrections or an amended report.

If a report is not received when due, the treasurer is contacted by letter and by telephone if necessary. After a certain amount of time, if the report still has not been received, the Commissioner may issue an Order of Noncompliance. Orders give the treasurer five days after receipt of the Order to file the delinquent report.

It is critical that statements and reports are filed in a timely manner. The Commissioner is required by statute to certify to the proper official (the Secretary of State or county election administrator) that a candidate has complied with all reporting requirements. The Secretary of State or county election administrator then can print names on the ballots, issue certificates of nomination when a candidate is nominated and issue certificates of election when a candidate is elected. Without this certification process, a candidate's name cannot appear on the ballot nor can a candidate assume an office, even if elected.

**** COMMITTEES ****

STATEMENT OF ORGANIZATION:

A new committee is authorized to accept contributions and make expenditures when a Statement of Organization (form C-2) is filed with the Commissioner. The name of the committee must be approved by the Commissioner before the statement is considered properly filed.

The naming and labeling section of the campaign finance laws requires that a political committee shall:

- (a) name and identify itself in its organizational statement using a name or phrase: (i) that clearly identifies the economic or other special interest, if identifiable, of a majority of its contributors; and (ii) if a majority of its contributors share a common employer, that identifies the employer; . . .”
[Section 13-37-210, MCA]

After the Statement of Organization is approved, an email or letter is sent to the treasurer packet of information is forwarded to the treasurer. The packet contains:

1. Accounting and reporting manual for committees (Pink Book)
2. Reporting forms C-7 and C-7E
3. A calendar of report due dates
4. Interpretation of the naming and labeling statute
5. A booklet of campaign finance laws
6. Disclaimer brochure
7. Information on Electronic Filing
8. Contribution limits summary

CAMPAIGN FINANCE REPORTS:

Political Action Committee (PACs) and Political Party Committees:

All political action committees and political party committees are required to file campaign finance reports (from C-6) with the Commissioner's office and with the county election administrator of their "headquarters county"; that is, the treasurer's county of residence.

As with the reports filed by candidates, the filing schedule is set out in statute, reports must be received by 5:00 PM on the report due date, and the reports must be reviewed within ten days of receipt .

The procedure for obtaining delinquent reports, correcting and amending reports, and issuing Orders of Noncompliance for committee is similar to those of candidates.

Ballot Issue Committees:

In addition to the above procedures for committees, ballot issue committees have a unique reporting component. In Montana, corporations can make contributions to ballot issues or ballot issue committees only. When a corporation makes a contribution to a ballot issue committee, the corporation becomes an incidental committee (see below) and has reporting requirements to the Commissioner's office.

Incidental Committees:

When reports from committees or candidates show contributions from an organization or group whose primary purpose is other than influencing election, the formation of an incidental committee has occurred. Almost any type of organization may become an incidental committee by way of making a political contribution. The organization then has reporting requirements to the Commissioner's office. Many groups are unaware of the requirements, and follow-up is usually necessary to acquaint them with their responsibilities and assist them in their compliance.

When reports show such a contribution, the Commissioner's office sends a letter to the organization. The packet contains, at a minimum, an explanatory memo, and a form C-2.

In addition to the form C-2, depending on several variables, the organization/incidental committee may be required to file campaign finance reports on the form C-4. The packet sent to the treasurer of the incidental committee (after the completed C-2 has been filed) will include:

1. Accounting and reporting manual for committees (Pink Book)
2. Forms C-7 and C-4
3. A booklet of campaign finance statutes
4. A calendar of reporting dates.
5. Disclaimer brochure
6. Information on electronic filing

PROCEDURES AND GUIDELINES FOR REVIEWING CAMPAIGN FINANCE REPORTS

I. GENERAL GUIDELINES

- ✓ Notes and marks made by office staff on reports are made with red pencil;
- ✓ Notes and marks should be clear and legible but kept to a minimum, and "sticky notes" are handy for this purpose **ONLY** when you need to make a detailed note for follow up to yourself;
- ✓ It should always be obvious to a third party when looking at a reviewed report exactly what the treasurer reported, and what we noted in our review of the report (arithmetic corrections, need for further information, etc.).
- ✓ Reports must be reviewed within 20 days of receipt. If a report is faxed, the fax receipt date is considered the receipt date. **When the original report subsequently is received by mail, the fax receipt date is noted on the original, and the fax copy is discarded.**

***Note: It is often easier to wait for the original to be received before reviewing a report. Faxes are often hard to read, and it saves having to transfer notes from the reviewed fax to the original; however, it's important to watch the 20-day deadline. Review the fax if the deadline is looming.*

Contribution Limits:

Individual Limits

The limits for **each election** in 2012 were:

Governor/Lt. Governor:	\$630
Other statewide offices:	\$310
Other public offices:	\$160

These limitations include **both** monetary and in-kind contributions.

Remember:

- If a candidate has a contested primary, they can receive the limit for both the primary and the general elections. If there is not a contested primary, there is only **ONE** election (the general) to which the limits apply.
- In-kind contributions designated for the general election cannot be accepted before the primary election.

Aggregate political party committee limitations

(These are aggregate limits from ALL political party committees combined.)

Governor/Lt. Governor:	\$22,600	}	
Other statewide offices:	\$ 8,150	}	for
Public Service Commissioner:	\$ 3,260	}	<u>each</u>
State Senate :	\$ 1,300	}	election
Other public offices:	\$ 800	}	

Aggregate PAC limitations for state legislative candidates for 2012

State Senate:	\$2,650	}	for <u>entire</u>
State House:	\$1,600	}	election cycle

Note:

There are no limits on contributions to ballot issue committee, transfers between committees or from individuals to political committees.

II. BEGINNING THE REVIEW

- In the upper right hand box of the finance report you are about to check, enter the review date and your initials. This information is not an indication of approval of the report or that it is in compliance; it simply indicates who reviewed the report and when.
- Make sure complete name and address are provided as well as office sought.
- Locate and pull the file for the appropriate candidate or committee.
- Verify that the reporting period provided by the treasurer matches that which is required in statute, and that there are no gaps in the periods covered by this and previous reports. If the reporting period falls short of the time required in statute, note that you'll need to contact the treasurer for an interim report or possibly for an amended report.
- Verify that the appropriate box for the type of report (Initial, Periodic, etc.) is checked.
- Verify the beginning balance of the CASH SUMMARY, Line 1. The beginning balance of the report should be the same as the ending balance of the previous report (CASH SUMMARY, Line 5). If the Report you are reviewing is an initial report, there will be no previous report, and the CASH SUMMARY, Line 1 must show \$0.00. If the amount on CASH SUMMARY, Line 1 is correct, make a small red check in the right margin.

- Verify the certification. The report must be signed by an appropriate person. A C-6 must be signed by an officer certified on the most recent form C-2 (usually a treasurer or deputy treasurer). A C-5 must be signed by the certified treasurer or deputy treasurer on the form C-1 or C-1-A; or by the candidate.

Schedule A, Receipts:

Arithmetic Review

- Add each column as reported and verify the page totals. If the column and/or page totals are correct, place a red check to the right of the figure. If the column and/or page totals are not correct, redline the totals as reported, and legibly write the correct total in the margin.
- Add all page totals for Schedule A, Receipts. Verify that the figure carried to CASH SUMMARY, Line 2 corresponds with the page totals. If so, place a red check in the margin next to the amount. If there is a discrepancy, redline the incorrect amount and note the correct amount in the margin.

Compliance Review

Schedule A, Sections 1 - 4 on C-5; Sections 1 - 3 on C-6:

- For a candidate, all receipts must be appropriately marked as Primary or General. Research the candidate's status to ensure the treasurer is tracking funds appropriately.
- The Total to Date (TTD) column must be completed for all contributions, including loans but excepting interest, rebates, refunds, other miscellaneous receipts, and fundraisers.
- Verify that any In-Kind contributions reported include an adequate description of what the contribution was; for example, a \$50 in-kind contribution would have "Printing" below the amount if it was for printing costs.
- Loans (Section 3, C-5; Section 2, C-6) are considered contributions; verify that any loans are compliant with contribution limits for the particular candidate. Full name and address of the contributor, occupation and employer, date of the loan, amount of the loan (including description of In-Kind if applicable), and TTD for that contributor.
- Interest, rebates, refunds, other miscellaneous receipts, and fundraisers (Section 4, C-5; Section 3, C-6) do not require a TTD. Specific amounts and sources

need to be shown for each category. If a fundraiser or other mass collection is reported, certain information (found in 44.10.521, ARM) must be provided. The required information for fundraisers is: type of fundraiser, date, approximately how many attended, and the amount received.

Schedule A, Sections 5 – 8 on C-5; Sections 4 – 7 on C-6
Political Committee contributions

- Full committee name and address, date of receipt, amount of contribution (and In-Kind description when applicable), and TTD must be provided.
- Verify that the contribution doesn't exceed limits, both individually and aggregate (refer to 13-37-216, MCA, and 44.10.331, ARM). Use the summary sheet to track aggregate limits.

A common confusion: There is NO individual limit for how much a political party committee can contribute to a candidate; there is, however, an aggregate limit)

- If a candidate reports receipts from a committee, or a committee reports receipts from a candidate, or a committee reports receipts from another committee, cross check with the corresponding report to see that each has reported and amounts agree. For example, if John Smith reports a contribution from the Milk Drinkers PAC (MOOPAC), MOOPAC must report a corresponding expenditure on their report. If they are ok, place a red check in the margin next to the committee name (or the name of the candidate).
- Any contributions involving committees must be recorded on the back of the candidate's or committee's summary sheet. Once the contribution is cross checked against the corresponding report, place a red check in the appropriate column on the summary sheet. Be sure that contributions fall within the limitations for aggregate PAC contributions to legislative candidates

Section 9 on C-5; Section 8 on C-6
Individual contributions

- Each contribution itemized must include the contributor's full name and mailing address, occupation, and employer; amount of contribution this period (and description of In-Kind if applicable), and TTD. "Businessman" is not ok; the entry must specify business type, and if they are the owner, president, etc.
- One individual name per contribution (Mr and Mrs Smith not allowed). If a check is drawn on a joint checking account, the contribution is reported from the signer of the check, NOT from both.
- TTD not to exceed limit for that type of candidate (no limits for contributions to committees of any type). Refer to 13-37-216.

Form C-7 information

- If any C-7 forms were received, check to see that all the information is included on the report. Cross check the C-7 with the report. If the information is on the report (form C-5 or C-6), initial and date the C-7 and file it immediately behind the report.

Schedule B, Expenditures

Arithmetic review

- Add the columns of amounts, and check the page totals as with Schedule A. If the column and/or page totals are correct, place a red check to the right of the figure. If the column and/or page totals are not correct, redline the totals as reported, and legibly write the correct total in the margin.
- Add all page totals for Schedule B, Expenditures. Verify that the figure carried to the CASH SUMMARY, Line 4 corresponds with the page totals. If so, place a red check in the margin next to the amount. If there is a discrepancy, redline the incorrect amount and note the correct amount in the margin.

Compliance review

- Note that there may be an amount in the Petty Cash column. That amount must not exceed the statutory limit for the type of candidate or committee; refer to 13.37.215, MCA and calculate the time involved from the reporting period.
- A separate entry under Schedule B must be completed for each expenditure; however, committees need not indicate "P or G" unless the expenditure purpose is a contribution to a candidate.

If several expenditures are made to the same Payee, it's sufficient to provide the full name and mailing address once for that payee as long as the other information is provided.

- If expenditures to a committee or another candidate are shown, cross check the report(s) of the recipient to see that they show receipt of the funds. If the reports correspond, put a red check in the margin next to the entry.

- Record expenditures that are contributions to candidates and other committees on the back of the summary sheet. Check the appropriate columns when they have been cross checked against the recipient of the funds.

Schedule C, Debts Not Yet Paid

- Any loans to the campaign which are outstanding are reported here. Track loans and outstanding debts with each report; they will become significant when a closing report is eventually filed. Closing reports are filed pursuant to 13-37-228 (3), MCA; closing reports may be filed only when all debt against the campaign is resolved.

Note that the amounts reported on Schedule C do not affect the cash summary of the campaign at this time.

Schedule D, Corrections to Previous Reports

- This section is used to correct previously filed reports. There may be an adjustment to the CASH SUMMARY for the campaign. Each correction is examined individually for compliance. For example, if the correction shows a contribution that was received in a previous reporting period but was inadvertently not reported, the correction entry must contain all of the information required for that type of contribution. Check to see that all corrections are properly entered in the CASH SUMMARY, Line 3

Cash Summary

- Do the math! Make any corrections by redlining the incorrect amount and writing in the correct amount. If there are significant arithmetic problems with a report, have another person in the office double check the figures.

Closing Reports

- For a report to be filed correctly as a closing report, there may be **no outstanding debts** reported in Schedule C. If there are outstanding debts listed, the treasurer must be notified that a closing report must be filed when all debts have been retired.
- If a report is a closing report, put a red "C" in the margin on the summary sheet by the reporting period of the closing report. You must also place a red dot on the manila file folder label for the candidate and/or committee.

- If a report is correctly filed as a closing report and there is an ending balance of \$10 or more, a form C-118 and an explanation memo must be mailed to the candidate. The form C-118 is used by candidates to report what they did with their surplus campaign funds. The C-118 is due back in this office 135 days after the closing report was filed.

III. FOLLOW UP

- Review your notes and corrections on the report, and determine the most appropriate and efficient follow up. This might be a phone call to the treasurer. **As a general rule, follow up should be done by emailing or mailing a letter or memo to the treasurer.** Depending on the problems with the report, an amended or corrected report may be necessary.

Our changes to correct a report should be kept to a minimum. The law requires the treasurer to report accurately; we need to work with them to achieve compliance, but we can't do the work for the treasurer.

- **Document your follow up on the summary sheet.** With a dated entry, summarize any phone calls, or note that a memo was sent (include a copy of the memo in the file; and cc the candidate with any written correspondence with the treasurer). The notes on the summary sheet should be written so that if you are not available, another staff person will be able to determine what the report problems are.
- Do not return original reports to the treasurer, except if a report is unsigned; in that case, make a photocopy of the unsigned report and keep the photocopy in the file.
- Complete the arithmetic portion of the file's summary sheet for this report.
- Note the report's status in the computer and/or on your written list.

IV. Follow Up to Follow Up!

- You will need to devise some way that works for you to track the status of reports that require follow up. Most of the time treasurers will respond promptly to requests for amendments, further information, corrections, etc. With the volume of candidates and committees we track.

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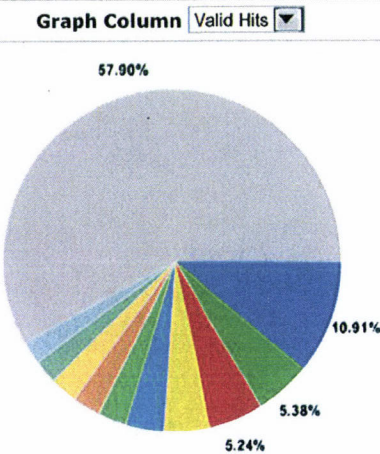
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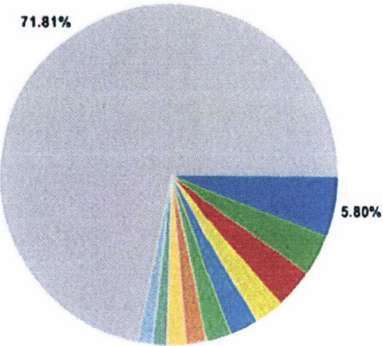
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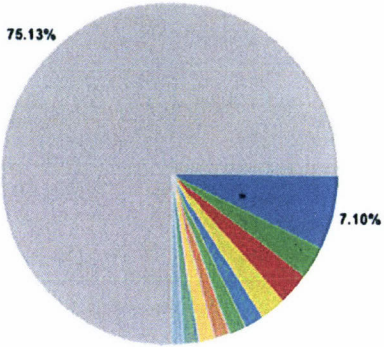
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